

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 11, 2022 @ 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, AWARDS, AND PRESENTATIONS:**
 - A. Mr. Sims Ray City Service Recognition**
 - B. Audit Presentation – Eric VanDop of Brickley DeLong; Transmittal of 6/30/21 Comprehensive Annual Financial Report**
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes City Clerk**
 - B. Transmittal of 6/30/2021 Comprehensive Annual Financial Report
Finance**
 - C. ADA Project Funding Reallocation Public Works**
 - D. Amity Avenue (92009) – Change Order #001 Public Works**
 - E. Michigan & Franklin (92003) – Change Order #003 Public Works**
 - F. Prein & Newhoff – Laketon/Lakeshore Trail Connector Engineering Assistance Public Works**
 - G. Prein & Newhoff – Sanford Street Engineering Assistance Amendment
Public Works**
 - H. Traffic Control Order 72 and 73 Traffic/Engineering**
 - I. 2021-2022 School Resource Officer Agreement Public Safety**
 - J. Sale – 1461 Nolan Avenue Planning**

K. 1095 Third Street RFP Response

Economic Development

☐ **PUBLIC HEARINGS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Sales Agreement 2725 Olthoff City Manager

B. Pere Marquette Parking Improvements Public Works

C. Development Agreement – West Urban City Manager

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC COMMENT ON NON-AGENDA ITEMS:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the December 14, 2021 Regular Meeting.	
Detailed Summary: N/A	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: To approve the minutes.	
For City Clerk Use Only: Commission Action:	

CITY OF MUSKEGON

CITY COMMISSION MEETING

DECEMBER 14, 2021 @ 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, December 14, 2021, Reverend D.W. Tolbert, New Hope Baptist Church, opened the meeting with a prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Dan Rinsema-Sybenga, Willie German, Jr., Ken Johnson, Michael Ramsey and Teresa Emory, Acting City Manager LeighAnn Mikesell, City Attorney John Schrier, and City Clerk Ann Meisch.

HONORS, AWARDS, AND PRESENTATIONS:

A. Lakeshore Art Festival Pure Award

The Pure Award is intended to recognize Michigan tourism entities that have pioneered the incorporation of innovative and exemplary best practices in natural, cultural, and/or heritage stewardship into their daily operations. This year, the Pure Award went to Lakeshore Art Festival (LAF), a collaboration of public and private partners including the city of Muskegon.

LAF is centered around positive social, economic and environmental impacts that complement the revitalization of Muskegon as a tourist attraction and a great place to live, work and play. This collaboration was a conscious effort to help revitalize downtown Muskegon through investment, environmental stewardship, supporting the arts and tourism.

B. Presentation to Mayor Gawron by Troop

Representatives from BSA Troop 1053, including David Paulsen Scout Master, presented Mayor Stephen J. Gawron, with a certificate and Michigan Crossroads Course arm patch, commemorating September 11, 2001, in appreciation and support of the Community Day of Remembrance and Scout Salute.

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

2021-108 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes for the November 23, 2021 Regular Meeting.

STAFF RECOMMENDATION: To approve the minutes.

B. Fireworks Display Permit for City of Muskegon City Clerk

SUMMARY OF REQUEST: Staff is requesting permission to sign an agreement with Pyrotecnico Fireworks and spend up to \$60,000 for expenses related to a fireworks show in downtown Muskegon. If granted, Pyrotecnico Fireworks is requesting approval of a fireworks display permit for Saturday, July 2, 2022 in downtown Muskegon. The fire Marshall will inspect the fireworks on the day of the event.

The proposed location of the fireworks is in the attached map. Both property owners have been contacted and are willing to let us close off their property within the yellow circle for the duration of the day and red circle during the event.

AMOUNT REQUESTED: Up to \$60,000 FUND OR ACCOUNT: DPW

STAFF RECOMMENDATION: To authorize the clerk to sign the agreement for fireworks in downtown Muskegon with Pyrotecnico and authorize the expenditures not to exceed \$60,000.

C. Farmers Market Heating & HVAC City Clerk

SUMMARY OF REQUEST: Tim Harvey, or builder, sought quotes to replace the heating and HVAC at the Farmers Market at an amount of \$24,420.

Tim was only able to receive on quote. Currently the barn has no air conditioning and the heat source does not work as well as it should. Replacing the current system will help us with future plans to revamp the barn as an all year facility to rent to local vendors including farmers, Kitchen 242 users, and vendors looking to move downtown. This is not a budgeted item and would come out of the Farmers Market budget.

AMOUNT REQUESTED: Up to \$30,000 FUND OR ACCOUNT: Farmers Market

STAFF RECOMMENDATION: To authorize staff to proceed in upgrading the heating/HVAC at the Farmers market with Jewett Heating and Cooling at a cost not to exceed \$30,000.

E. Extension of Temporary Employment Services Agreement EEO & Employee Relations

SUMMARY OF REQUEST: To approve a one-year contract extension with GoodTemps Temporary Staffing Services, Inc. for temporary and seasonal

employment services. The current agreement expires on December 31, 2021.

STAFF RECOMMENDATION: To approve the agreement with GoodTemps Temporary Staffing Services, Inc. and authorize the Mayor and City Clerk to sign the agreement extension.

F. Non-Union Part Time and Limited Term Wage Matrix EEO & Employee Relations

SUMMARY OF REQUEST: The 2022 wage matrix has been updated to reflect the anticipated part time and limited term positions for next year.

STAFF RECOMMENDATION: Approve the updated wage matrix for the non-union part time limited term employees for 2022.

G. MDOT Property Purchase Public Works

SUMMARY OF REQUEST: Staff is seeking formal resolution confirming purchase of excess property from MDOT for use as a public open space.

The parcel in question is located along the southwest side of 9th Street between Muskegon Avenue and Webster Avenue. The property is legally owned and controlled by the State of Michigan (MDOT) as a part of the limited access highway right-of-way for Shoreline Drive.

City staff has pursued purchase of this parcel from MDOT for consideration as a skate park site. Recently alternative sites have been identified that are a better fit for locating a skate park and this site is no longer planned for use in that fashion. However, the work had been done to acquire the excess property and staff would like to see that through.

The immediate plans for this site involve retaining the site as a public open space, with potential consideration for alternative uses if/when the 10-year reverter clause is released.

AMOUNT REQUESTED: \$5,000 AMOUNT BUDGETED: \$0

FUND OR ACCOUNT: 101-70751-5703

STAFF RECOMMENDATION: Approve the Resolution for purchase of the excess property from MDOT and authorize the Mayor and Clerk to sign.

H. National Highway System (NHS) Revisions Public Works

SUMMARY OF REQUEST: Staff is seeking to have portions of Peck Street, Sanford Street, and Terrace Street reclassified in terms of their NHS (National Highway System) and NFC (National Functional Classifications) status.

Staff has been working for several years with the West Michigan Shoreline Regional Development Commission (WMSRDC), the Michigan Department of Transportation (MDOT), and the City of Muskegon Heights to have several segments of street reclassified to better suit their current use.

Historically Sanford, Peck and Terrace have served as state highways, and as critical routes to key Department of Defense industrial sites in the area (Continental Motors). This importance led to the streets being classified as NHS routes which in turn requires them to be constructed with wider lanes and heavier pavement to accommodate larger and heavier traffic.

As times have changed the need for these roads to be classified as NHS routes has also changed. The proposal would remove these routes from the NHS entirely. In addition, the roads will be reduced in classification from their current standing as principal arterial routes down to a more appropriate level of minor arterial.

This change does not impact our Act 51 funding, and the roads will remain eligible for federal aid. The benefit derived from making this change is that the roads can be designed and reconstructed in such a way that does not require overly wide lanes that encourage speeding and heavy pavement designs which increase project costs.

STAFF RECOMMENDATION: Support the change in NHS and NFC designations for Peck, Sanford and Terrace Streets and authorize the City Manager to sign the letter formally requesting the changes.

I. Project 91851(Spring & Yuba Streets) – Change Orders & Engineering Services Amendment Public Works

SUMMARY OF REQUEST: Staff is seeking approval of Final Contract Modifications #004 and #005 with Jackson-Merkey Contractors and for approval of a Final Amendment (#004) of the Engineering Services Agreement with ENG, Inc. for Project 91851 (Spring/Yuba Street).

Contract Modifications #004 and #005 with Jackson-Merkey Contractors detail all of the changes to specific work items that were required to successfully complete the project. There were a number of changes necessary due to the complex nature of the project along with unforeseen underground conditions in this oldest area of town. The project has required commission approval for Change Orders starting with Change order #003 which added the work on Yuba Street and was above the staff approval threshold. If Contract Modification #004 and #005 are approved the final project contract amount will be \$3,477,719 on an original project amount of \$3,075,529 representing a 13% increase of which over 5% is a result of the additional Local Streets work on Yuba Street not related to the original project.

Engineering services Amendment #004 includes increased engineering costs required to provide engineering oversight and support on the project, which took considerably more time, and effort than originally budgeted. If approved, the Engineering Cost for this project will be \$364,105 which represents approximately 11% of the Construction Contract value and is in alignment with industry and expected standards for a project of this scope and scale.

All of the SRF/DWRF project carried a budgeted contingency of 6%. Approval of these Change orders and the Engineering Services Amendment will not exceed the budgeted contingency on the project package as a whole as several other projects completed well below their contingency amounts.

For reference, if approved, the project will have remaining expenses estimated at \$973,111.40 and a remaining budget of \$975,607.00, no future reforecasts are anticipated.

AMOUNT REQUESTED:

Change Order #004 - \$156,367.69

Change Order #005 - \$104,697.69

ESA #004 - \$63,700.00

AMOUNT BUDGETED:

\$975,607 Remaining

(202/203/590/591-91851)

FUND OR ACCOUNT: Various-91851-5346

STAFF RECOMMENDATION: Authorize staff to approve Change Orders #004 and #005 with Jackson-Merkey Contractors , and authorize staff to approve Engineering Services Amendment #004 with ENG, Inc. for the work on Spring and Yuba Streets.

J. Edgewater Resources Engineering Services Agreement Public Works

SUMMARY OF REQUEST: Staff is seeking approval of two (2) Engineering Services Agreements with Edgewater Resources related to the development of public infrastructure at Adelaide Pointe.

Both of these Engineering Services Agreements cover items for development that are partially funded by the City and partially funded by the Developer. As such, the standard purchasing policy was not used for procurement. The proposal was requested from the developers engineer as they are the best suited to complete this joint investment portion of the project based on their prior work at the site. The remaining public infrastructure items (streets, water, sewer, etc...) will be recommended for Commission Approval via a Request for Proposals process at a later date.

- The work contained within the first ESA encompasses the permitting required for the work in the East Basin (Formerly the Hartshorn Marina Small Boat Basin). The project work will require completion of a Joint Permit Application to MDEGLE with concurrence and review from the USACE and USCG.
- The work contained within the second ESA encompasses the design, bidding and construction engineering for the lift well and launch ramp elements of the east basin. As noted above, these are considered public infrastructure improvements per the Development Agreement and Brownfield Plan.

In conjunction with the work outlined in these two ESA documents Edgewater Resources will also be completing permitting and engineering for the non-public portions of the work at developer's expense within the east basin which includes additional dredging, construction of shopper docks, and other items.

Staff is recommending that these ESA's be approved conditional to the sale for the bonds to finance the public infrastructure on the site.

AMOUNT REQUESTED:

Permitting ESA = \$15,000

Lift Well & Ramp ESA = \$85,000

AMOUNT BUDGETED:

Estimated \$10M Bond Revenue for Public

Infrastructure at a TBD Future Date

FUND OR ACCOUNT: TBD Brownfield Fund

STAFF RECOMMENDATION: Authorize staff to execute the Engineering Services Agreements from Edgewater Resources related to the work in the East Basin, contingent upon successful sale and closure of the bonds for the public infrastructure at this site.

K. Project 92002 Change Order #003 - Peck Street from Merrill to Apple Public Works

SUMMARY OF REQUEST: Staff is seeking approval of Final Contract Modifications #003 with McCormick Sand for their work on the northern portion of the Peck Street project.

Contract Modifications #003 represents the final adjustment of quantities and cost for the project to bring it to final completion. The project as a whole will finish at \$874,335.87 which represents an increase of \$31,197.05 over the As-Bid amount (\$843,138.82) representing an increase of 3.7%

The largest increase was a result of requiring additional length of water line to replace the water services along the project (>\$24K). Under the new state guidelines we must replace the service line to a point within the house and inconvenience the property owner a minimum number of times.

The project will finish very near the programmed budget once final engineering and testing costs are accounted. A slight adjustment via a future reforecast is possible to match the final project amounts.

This change order is brought for Commission consideration as it exceeds the staff approval threshold of \$30K. The previous two change orders were within the staff approval limits.

AMOUNT REQUESTED:

Change Order #003 - \$35,929.16

AMOUNT BUDGETED:

\$650,000 (202-92002)

\$300,000 (591-92002)

FUND OR ACCOUNT: Various-91851-5346

STAFF RECOMMENDATION: Authorize staff to approve Change Orders #003 with McCormick Sand for the work on City project 92002 (Peck Street – Merrill to Apple).

N. Social District 2022 Fee Economic Development

SUMMARY OF REQUEST: The City Commission is asked to consider the 2022 fee for Muskegon Downtown Social District stickers.

The city charges for social district stickers placed on establishments' branded cups that allow patrons to take and consume alcoholic drinks in the Social District Common Area. The first year the city charged two fees, one for regular days and a higher fee for special events. The average cost of fees were 60 cents with 62 percent of the stickers sold at the special event prices. With consensus support of the establishments, staff recommends a sing 75-cent sticker fee for the entire year. This same fee would be charged to Lakeside Social District establishments. The downtown fee is estimated to raise \$92,250 with the 25 percent increase needed to help cover city costs of producing special events in the downtown social district and startup costs in Lakeside. All sticker revenues will cover direct social district costs or indirect city special event costs.

STAFF RECOMMENDATION: To approve a 75-cent city social district sticker fee for the 2022 calendar year.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to accept the consent agenda as presented minus items, D, L, and M.

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

Nays: None

MOTION PASSES

2021-109 REMOVED FROM CONSENT AGENDA:

D. FY22 Municipal Senior Millage Funding Community & Neighborhood Services

SUMMARY OF REQUEST: To approve allocations of the Municipal Senior Millage funding to city programs geared toward citizens who are 60 years of age, or older.

An allocation of \$94,640 from the county of Muskegon FY22 Municipal Senior Millage funding is budgeted for the following programs:

Power of Produce (Farmers Market) - \$40,000

Home Repairs (CNS) - \$54,640

AMOUNT REQUESTED: \$94,640

AMOUNT BUDGETED: \$94,640

FUND OR ACCOUNT: FY22 Municipal Senior Millage

STAFF RECOMMENDATION: To approve the budget proposed for City of Muskegon programs utilizing FY22 Municipal Senior Millage Funds from the County of Muskegon.

Motion by Commissioner German, second by Commissioner Rinsema-Sybenga, to approve the budget proposed for City of Muskegon programs utilizing FY22 Municipal Senior Millage Funds from the County of Muskegon.

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

Nays: None

MOTION PASSES

L. **Arena Vending** City Manager

SUMMARY OF REQUEST: Staff is seeking approval to purchase three vending machines for Mercy Health Arena.

Arena staff has been unable to consistently open the concession stands in a profitable manner during small events such as youth hockey, high school hockey, etc. Staff is recommending that three vending machines be purchased to provide snacks, cold drinks, and hot drinks during these times. Staff has received a number of quotes, and it is likely that multiple vendors will be used to complete the purchase(s). We are seeking approval to expend \$25,000 to purchase the three machines. A sample of the machine types and costs is attached.

Although this specific purchase was not budgeted, staff feels that the purchase can fit within the current Mercy Health Arena budget.

AMOUNT REQUESTED: \$25,000 AMOUNT BUDGETED: \$25,000

FUND OR ACCOUNT: Mercy Health Arena

STAFF RECOMMENDATION: Authorize the purchase of three vending machines for Mercy Health Arena at a combined cost not to exceed \$25,000.

Motion by Commissioner Emory, second by Commissioner German, to authorize the purchase of three vending machines for Mercy Health Arena at a combined cost not to exceed \$25,000.

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

Nays: None

MOTION PASSES

M. CSXT Purchase Agreement City Manager

SUMMARY OF REQUEST: Staff is seeking authorization to enter into an agreement with CSXT.

For the past 5+ years, staff has been working to complete the purchase and removal of the CSXT railroad line that runs from the former YMCA through Lakeside to the Jaycees Launch Ramp. The attached agreement would allow for a portion of the line to be converted into a trail via a trail use agreement, and the remainder of the line to be used for redevelopment.

The purchase price is \$1,648,000. We anticipate \$40,000 in filing fees as well. As part of the due diligence period, we will have the entire line surveyed. We do not have a cost for the survey, and instead will use a billable hourly rate model. Staff has a tight timeline to complete due diligence and prepare for Federal Approval. As such, we will be requesting authorization to both sign the agreement and formally complete the sale at the end of the due diligence period. We are using a combined not-to-exceed budget number of \$2 Million. We are proposing to utilize ARPA dollars to complete the purchase, but we foresee opportunities to recoup most/all of this investment via a combination of Brownfield TIF and allowing the buy-out of the various crossing agreements that we will inherit.

AMOUNT REQUESTED: \$2 Million AMOUNT BUDGETED: \$0

FUND OR ACCOUNT: State/Federal Grants

STAFF RECOMMENDATION: To authorize the City Manager to sign the Agreement and complete the transaction upon successful completion of the due diligence, and thereafter to return to the City Commission for final approval of transaction prior to closing.

Motion by Commissioner German, second by Commissioner Rinsema-Sybenga, to authorize the City Manager to sign the Agreement and complete the transaction upon successful completion of the due diligence, and thereafter to return to the City Commission for final approval of transaction prior to closing.

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

Nays: None

MOTION PASSES

2021-110 PUBLIC HEARINGS:

A. Infill Housing Project Brownfield Plan Public Hearing (3rd Amendment)
Economic Development

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution which seeks to adopt an amendment to the City's Brownfield Plan (Infill Housing

Project, 3rd Amendment). On November 30, 2021, the BRA approved the Plan Amendment and further recommends that the Muskegon City Commission approve the Plan Amendment.

City staff has prepared a brownfield plan to include an additional 386 parcels beyond the 119 parcels previously adopted in the 2nd Amendment. This brings the total to 505 Eligible Properties for this project and the lots are scattered throughout the city. The City Commission approve the Plan's 1st Amendment on 7/28/2020 and 2nd Amendment on 12/8/2020. This Amendment seeks to modify the plan by adding in all of the government-owned, vacant residential properties in the City.

The 3rd Amendment also includes the following updates:

- Developer's Reimbursement Costs: Infill Housing - \$13,557,000; Mixed-use projects-\$1,000,000; Total reimbursement costs - \$14,557,000
- Estimated Total Capital Investment: Infill Housing - \$127,000,000; Home rehab - \$500,000; Mixed Use developments: \$26,000,000; Total Estimated Capital Investment - \$153,500,000
- The Plan anticipates eligible activities, paid through future capture of tax increments, to include \$11,780,000 for cost of sale/seller concessions; \$2,000,000 for demolition and potential costs of abatement; \$777,000 to construct public infrastructure at the former farmers market; \$20,000 for brownfield plan preparation and development; a 15% plan contingency fee of \$2,603,100; and which reflects total eligible activities to be paid under this plan at \$19,957,100. The eligible activities will also be reimbursed with interest at 5%.
- The Authority intends to enter into Development & Reimbursement Agreements with future property owners/developers of properties included in the Plan to reimburse them for costs of eligible activities.
- The duration of this Plan does not exceed 30 years and complete recapture of eligible costs through tax increment revenue are expected to occur within this period. The duration of the tax capture began in 2020 and does not "reset" with the adoption of this 3rd Amendment.
- The plan contemplates continued five-year capture of tax increments for a local Brownfield Revolving Loan Fund if there is time left in the 30-year plan after eligible costs are covered.

STAFF RECOMMENDATION: To close the public hearing and approve the resolution of the Brownfield Plan Amendment for the City's Infill Housing Project (3rd Amendment).

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to

close the public hearing and approve the resolution of the Brownfield Plan Amendment for the City's Infill Housing Project (3rd Amendment).

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

Nays: None

MOTION PASSES

B. Lakeside Corridor Improvement Authority Development and TIF Plan Public Hearing Development Services

SUMMARY OF REQUEST: The Lakeside Corridor Improvement Authority has reviewed and approved the Development and TIF Financing Plan, which must also be approved by the local unit of government.

The Lakeside BID/CIA has completed a review of their Development and TIF Financing Plan, which lays out project priorities for the funds collected through TIF and other eligible means. Per Public Act 57 of 2018, it must be approved by the local unit after a public hearing is held, and other taxing jurisdictions are noticed. From here the plan is filed with the State and said taxing jurisdictions have 60 days from plan approval to opt out. The proposed plan reflects funds with no school tax capture, but no opt outs from other taxing jurisdictions.

STAFF RECOMMENDATION: To close the public hearing and approve the Lakeside Corridor Improvement Authority Development and TIF Financing Plan as presented.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to close the public hearing and approve the Lakeside Corridor Improvement Authority Development and TIF Financing Plan as presented.

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

Nays: None

MOTION PASSES

2021-111 NEW BUSINESS:

A. Housing Board of Appeals Demolition – 238 Houston Public Safety

SUMMARY OF REQUEST: To concur with the Housing Board of Appeals recommendation to demolish 238 Houston.

This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 238 Houston, 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.

STAFF RECOMMENDATION: Staff recommends that the City Commission concur with the Housing Board of Appeals recommendation to demolish 238 Houston and also recommends approval from the City Commission to accept bids on the demolition.

Motion by Commissioner Ramsey, second by Commissioner Rinsema-Sybenga, to concur with the Housing Board of Appeals recommendation to demolish 238 Houston and to accept bids on the demolition.

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

Nays: None

MOTION PASSES

B. 2022 SEIU Unit 2 Contract City Manager

SUMMARY OF REQUEST: Staff is seeking approval of the proposed collective bargaining agreement with the Service Employees International Union Unit 2.

City staff and Service Employees International Union Unit 2 representatives have agreed upon new contract items that would take effect January 1, 2022. A summary of the tentative agreements and wage scale is attached, and the SEIU Unit 2 has ratified the contract. The new wage scale provides more parity among classifications over time. The formal agreement will be prepared by counsel. The new agreement is beneficial to both parties and does not have a financial impact on the current budget. Staff is prepared to begin implementing the provisions of the contract on January 1, 2022.

STAFF RECOMMENDATION: To approve the collective bargaining agreement with the Service Employees International Union Unit 2 as presented.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to approve the collective bargaining agreement with the Service Employees International Union Unit 2 as presented.

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

Nays: None

MOTION PASSES

2021-112 ANY OTHER BUSINESS:

In recognition of Mayor Gawron's decades-long service to our community, motion by Commissioner Johnson, second by Commissioner Emory, to name the dog beach boardwalk at Kruse Park after Stephen J. Gawron and invite him to a future ribbon-cutting ceremony when upcoming boardwalk renovations are completed.

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

Nays: None

MOTION PASSES

PUBLIC COMMENT ON NON-AGENDA ITEMS: Public comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 6:58 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: Transmittal of 6/30/21 Comprehensive Annual Financial Report
Submitted By: Kenneth D. Grant	Department: Finance
Brief Summary: The City's June 30, 2021 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. At this time the CAFR is being formally transmitted to the City Commission. 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. https://www.muskegon-mi.gov/cresources/CAFR-Final-compressed.pdf	
Detailed Summary:	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To accept the June 30, 2021 CAFR and authorized staff to transmit the CAFR to appropriate Federal, State and private agencies.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: ADA Project Funding Reallocation
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to revised the previously approved allocations from the ADA project account for projects along Western Avenue.	
Detailed Summary: On September 14th, 2021 the City Commission allocated \$200,000 towards ADA work in the FY 21/22 budget as shown in line 101-91116 between three projects as follows: • \$120,000 – Frauenthal sidewalk replacement and snow melt system • \$40,000 – Streetscaping and sidewalk replacements along Western and 2nd at The Leonard • \$40,000 – 3rd to 5th Parking / Sidewalk flex space Subsequent to the ADA distribution it was decided to dedicate ARPA dollars towards the Frauenthal project. As such staff would like to adjust the previous ADA allocation to redistribute the Frauenthal dollars to the other projects. The proposed new distribution would be as follows: • \$100,000 – Streetscaping and sidewalk replacements along Western and 2nd at The Leonard • \$100,000 – 3rd to 5th Parking / Sidewalk flex space The \$100,000 allocation in conjunction with The Leonard will make that project whole and complete everything required. The \$100,000 allocation towards the work on Western will need additional funding from the Major Street fund in a future reforecast to make the project whole. There is currently a budget surplus in the Major Street fund for FY21/22 to accommodate this revision and it will be addressed in a future reforecast.	
Amount Requested: \$200,000	Amount Budgeted: \$200,000
Fund(s) or Account(s): 101-91116	Fund(s) or Account(s): 101-91116
Recommended Motion:	

Authorize staff to utilize the budgeted \$200,000 allocation for ADA Projects in partnership with The Leonard streetscaping and sidewalk replacements and for a pilot project to construct flex parking/sidewalk space along two blocks of Western Avenue between 3rd and 5th.

Check if the following Departments need to approve the item first:

Police Dept. ☐

Fire Dept. ☐

IT Dept. ☐

For City Clerk Use Only:

Commission Action:

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: Amity Avenue (92009) – Change Order #001
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to approve Change Order #001 on the Amity Avenue construction project.	
Detailed Summary: Change Order #001 for the work on Amity Avenue is requesting approval to increase the contract amount by \$85,532.37 because of new items that were required on the contract. The original contract amount was \$4,138,499.30 and this change order represents a 2% increase. The project budget carried a 6% contingency and this increase will not exceed that contingency. The Amity Avenue project will be a second change order needed for this project to balance out the original items in the contract, which include many unused items. The Engineer and Contractor are in the process of finalizing those details. When Change Order #002 is finalized it is expected that it will be a net decrease and offset much of the added cost in Change Order #001.	
Amount Requested: \$82,532.37	Amount Budgeted: \$248,309.96 (6% of As-Bid)
Fund(s) or Account(s): 590/591-92009	Fund(s) or Account(s): 590/591-92009
Recommended Motion: Authorize staff to approve Change Order #001 to the Amity Avenue project (590/591-92009).	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

CHANGE ORDERNo. 1OWNER City of MuskegonCONTRACTOR Kamminga & Roodvoets, Inc.Project: Amity Avenue ImprovementsENGINEER's Project No. 842440ENGINEER Fleis & VandenBrink Engineering

The Contract is modified as follows upon execution of this Change Order:

Description:

- Item 110 Orchard/Fork Sewer Correction (Lsum) **Add: \$33,404.72**
 - Item 111 Getty Water Main Line Stops (Lsum) **Add: \$16,823.01**
 - Item 112 Manhole Outside Drop (3 Ea. x \$1,686.20) **Add: \$ 5,058.60**
 - Item 113 Valve Box Replacement (2 Ea. x \$744.14) **Add: \$ 1,488.28**
 - Item 114 Storm Sewer, 18 inch (5.5 Ft. x \$75.00) **Add: \$ 412.50**
 - Item 115 Sewer Tap, 18 inch (1 Ea. x \$700.00) **Add: \$ 700.00**
 - Item 116 Exploratory Digging (13.5 hrs x \$461.13) **Add: \$ 6,225.26**
 - Item 117 Tree & Stump Removal, 6"-18" (3 Ea. x \$813.75) **Add: \$ 2,441.25**
 - Item 118 Tree & Stump Removal, 19"-36" (9 Ea. x \$1,674.75) **Add: \$15,072.75**
 - Item 119 Tree & Stump Removal, 37" and over (1 Ea. x \$3,906.00) **Add: \$ 3,906.00**
- Total Add: \$85,532.37**

CHANGE IN CONTRACT PRICE
Original Contract Price \$ <u>4,138,499.30</u>
Increase (Decrease) from previously approved Change Orders No. <u>NA</u> to <u>NA</u> : \$ _____
Contract Price prior to this Change Order: \$ <u>4,138,499.30</u>
Increase (Decrease) of this Change Order: \$ <u>85,532.37</u>
Contract Price incorporating this Change Order: \$ <u>4,224,031.67</u>

CHANGE IN CONTRACT TIMES
Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ (days or dates)
Increase (Decrease) from previously approved Change Orders No. _____ to _____ : Substantial Completion: _____ Ready for Final Payment: _____ (days)
Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ (days or dates)
Increase (Decrease) of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ (days)
Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By: 
ENGINEER (Authorized Signature)
Title: Project Manager
Date: December 10, 2021

By: _____
OWNER (Authorized Signature)
Title: _____
Date: _____

By: _____
CONTRACTOR (Authorized Signature)
Title: _____
Date: _____

Approved by Funding Agency (if applicable):

By: _____

Date: _____

Title: _____

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: Michigan & Franklin (92003) – Change Order #003
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to approve Change Order #003 on the Michigan & Franklin construction project.	
Detailed Summary: Change Order #003 for the work on Michigan Avenue & Franklin Avenue is requesting approval to increase the contract amount by \$47,820.00. There are several small adjustments needed to the Michigan and Franklin project that were identified as having been missed for previously payment during final closeout between the Engineer and Contractor. These are shown as Line items 1-4 on the attached and would not exceed the threshold for staff approval on their own. Additionally there is one large extra item shown as Line item 5 which was added onto this contract, but was completed at a different location. The storm sewer outlet at Spring Street and Webster Avenue was found to be collapsed during construction of the work on Spring Street, and required immediate emergency repair to prevent flooding and damage. The Contractor for Spring Street was unable to complete this work in a reasonable timeframe due to prior commitments and as such staff worked with our Engineer to solicit bids for this work. Wadel Stabilization provided the low bid and was authorized to complete this work in accordance with the emergency purchasing policy. Adding this work to an existing contract which was already in place with Wadel Stabilization (Michigan & Franklin) allowed for all of the contract provisions and insurance to remain in place to cover this additional work rather than starting from scratch. Commission was notified via email on 9/24/2021 of the intent to utilize the Emergency Purchasing provisions for this work.	
Amount Requested: \$47,820.00	Amount Budgeted: \$47,820.00
Fund(s) or Account(s): 202-92003 (Michigan & Franklin) 590-91851 (Spring Street)	Fund(s) or Account(s): 202-92003 (Michigan & Franklin) 590-91851 (Spring Street)
Recommended Motion:	

Authorize staff to approve Change Order #003 to the Michigan Avenue and Franklin Avenue project.

Check if the following Departments need to approve the item first:

Police Dept. ☐

Fire Dept. ☐

IT Dept. ☐

For City Clerk Use Only:

Commission Action:

CITY OF MUSKEGON
DETAILED CONTRACT CHANGE REQUEST

CONTRACTOR		CONTRACT						DATE	12/8/2021
Wadel Stabilization, Inc. 2500 Oceana Dr. Hart, MI 49420		MICHIGAN AVE AND FRANKLIN STREET H-92003, *202-91851						CHANGE ORDER No. 3	
ITEM OF WORK DESCRIPTION, REASON, LOCATION OF CHANGE		UNIT OF MEASURE	QUANTITY PROPOSAL	QUANTITY AS BUILT	QUANTITY INCREASE +	QUANTITY DECREASE -	UNIT COST	AMOUNT INCREASE	AMOUNT DECREASE
42	CP Sharrow decrease in quantity by (3). Changed to CP Bike W / Arrow	EA	14	11		3	\$180.00	\$0.00	(\$540.00)
83	CP Bike W / Arrow, replaced Sharrow on LSD/Mich in dedicated bike lane	EA	0	3	3		\$320.00	\$960.00	\$0.00
42	CP Sharrows done on Beach St. added to this contract	EA	0	10	10		\$180.00	\$1,800.00	\$0.00
84	Undercutting on Michigan Ave at 2 locations. Replaced clay under failing areas of road with sand and gravel overlay.	LS	0	1	1		\$4,700.00	\$4,700.00	\$0.00
85	Spring St. Storm Sewer Outlet (*202-91851 FUND)	LS	0	1	1		\$40,360.00	\$40,360.00	\$0.00



CHANGE REQUEST EFFECIVE DATE: 12/8/2021

TOTALS \$47,820.00 (\$540.00)

ORIGINAL CONTRACT PRICE:	\$829,357.35
REVISED CONTRACT PRICE(CO1+ CO2)	\$877,831.86
NET +/-	\$47,280.00
REVISED CONTRACT PRICE:	\$925,111.86

ENGINEERING DEPARTMENT		CONTRACTOR APPROVAL	CITY OF MUSKEGON APPROVAL
		AUTHORIZED REPRESENTATIVE AND DATE	AUTHORIZED REPRESENTATIVE AND DATE
		Brian DeLong - Estimator	
PREPARED BY	DATE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: Prein & Newhoff – Laketon / Lakeshore Trail Connector Engineering Assistance
Submitted By: Leo Evans	Department: Public Works

Brief Summary:

Staff is requesting authorization to enter into a Professional Services Agreement (PSA) with Prein & Newhof to provide grant and engineering assistance related to a proposed new non-motorized trail.

Detailed Summary:

This item pairs with another item on the agenda. See also the request for an amendment to the PSA with Prein & Newhof for the Sanford Street project.

Staff is planning to pursue a combination of TAP (Transportation Alternatives Program – MDOT) and RTP (Recreational Trails Program – MDNR) funding to provide the backbone financing for the construction of a planned trail connection along Sanford and Terrace Streets. Preliminary meetings with both state agencies have verified the project as a good candidate for both programs as well as being a regional priority.

The proposed trail route would start at the intersection of Sanford/Laketon and replace the eastern sidewalk along Sanford Street north to Apple Avenue. The trail would cross Apple Avenue at the signalized intersection (Apple/Sanford) then follow north along the sidewalk on the southwest side of Terrace Street to Shoreline Drive. The trail would cross Shoreline Drive at the signalized intersection, cross the railroad at the existing sidewalk crossing then join the Lakeshore Trail.

While the opportunity for the grant funding is encouraging it does come with the consequence of requiring the non-motorized pathway project to be separated entirely from the other utility work that is planned for Sanford Street. So while they could be constructed in near conjunction/succession (pending grants), they must be administered entirely separately. In addition the TAP/RTP funding would require the non-motorized trail project to be administered as an MDOT local agency program, which has a separate schedule and requirements from the other utility projects.

As such staff is requesting to enter into a separate PSA to administer the trail project, and requesting a reduction in the original Sanford Street PSA to remove some of the expense from that agreement related to incorporating the planned trail. As these projects are best designed and planned concurrently by the same team we have not solicited bids for this work but rather have requested a proposal only from the team working on the Sanford Street utility project.

You'll note that the new agreement costs more than the reduction to the existing agreement. There are a number of reasons for that but the primary one is the requirement that the projects be administered entirely separately creating duplication of efforts in many areas. In addition being an MDOT administered local agency project carries additional requirements that increase the cost and

time required. However, if the project is successful in securing the noted grant funding, the increase in the engineering costs will be more than offset by the grant amounts.

The Sanford Street utility project is still planned for 2023 construction. With a quick turnaround and a successful grant application we could potentially pursue TAP/RTP funding for the same fiscal year. There is a possibility that FY23 funding through MDOT/MDNR will not be available in which case we may need to consider 2024 funding and construction.

Amount Requested: \$158,700
(FY21/22, 22/23 & 23/24)

Amount Budgeted: \$0
(\$40K in 21/22 via Future Reforecast)

Fund(s) or Account(s): 202

Fund(s) or Account(s): 202

Recommended Motion:

Authorize staff to sign the professional services agreement with Prein & Newhof to provide grant application assistance, design engineering and construction administration related to a non-motorized pathway along Sanford and Terrace Streets.

Check if the following Departments need to approve the item first:

Police Dept. ☐

Fire Dept. ☐

IT Dept. ☐

For City Clerk Use Only:

Commission Action:

December 23, 2021

Mr. Leo Evans, P.E.
City of Muskegon
Department of Public Works
1350 Keating Avenue
Muskegon, MI 49442

Re: Proposal for Professional Engineering Services for TAP Grant and Sanford NMP

Dear Mr. Evans:

We are submitting this proposal to provide professional engineering services to assist you with applying for a TAP grant for a non-motorized path (NMP) along Sanford Street from Laketon to Shoreline. This proposal also includes design and construction phase services for the proposed pathway assuming it will be a Local Agency Project.

We have reviewed the project and have developed the following scope of services. This project was previously included in our existing contract for the Sanford Street SRF/DWRF project and did not consider MDOT LAP funding. This proposal assumes the design work will be done with the Sanford project however a separate plan set will be developed. We assume that this project will be funded in FY 2024 the year following completion of the Sanford project.

Preliminary Design and Grant Application

- Complete TAP grant application and supporting documentation, assumes city will assist in obtaining letters of support;
- Complete NEPA review and submit necessary supporting documentation including SHPO review;
- Complete Program Application.

Design and Bidding Phase

- Assist City in determining alignment of non-motorized pathway;
- Complete design of proposed NMP on Sanford using base maps from Sanford SRF/DWRF project and completing design concurrently with the design of that project;
- Use City provided survey of Terrace Street to develop plans for a non-motorized path (NMP) from Apple to Shoreline.
- Provide assistance with MDOT and Railroad ROW permitting for NMP including signal rework;
- Provide construction estimate and scoping assistance for pedestrian lighting;
- Attend two design review meetings;
- Attend GI meeting with Utilities and MDOT;
- Prepare and submit SESC permit application (City to pay any permit fees);
- Prepare opinion of probable cost based on final design;
- Prepare necessary special provisions.

Construction Phase

- Schedule and attend preconstruction meetings and prepare minutes;
- Track and review shop drawings;
- Provide construction staking;
- Provide testing (soil density, gravel, asphalt, and concrete, etc.);
- Provide construction observation in accordance with LAP requirements assuming 10 weeks of construction, (450 hours);
- Schedule and attend monthly progress meetings as needed, and prepare minutes for each;
- Respond to RFIs, prepare payment applications and change orders;
- Provide MDOT certified Office Technician;
- Prepare punch lists and close out documents.

Fee

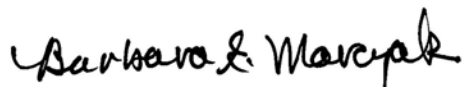
Based on the scope of work described above, we propose to complete the work for a not to exceed cost of \$158,700. Our estimated time/work level of effort is attached. Our hourly rates are adjusted each January. We have included an increase of 3% in hourly rates in 2023 and 2024. Our fee does not include time to obtain grading easements or pedestrian lighting design. Once the contract is let and the contractor provides a schedule for construction, we may need to review the estimated construction time.

We are also offering a deduction in our fee for our existing SRF/DWRF Sanford/Hadden project of \$61,000.00.

Thank you for the opportunity to provide this proposal. Please contact us if you have any questions.

Sincerely,

Prein&Newhof



Barbara E. Marczak, P.E.

Enclosures: Estimated work effort/fee, Professional Services Agreement

Project No.

Professional Services Agreement

This Professional Services Agreement is made this 23th day of December, 2021 (“Agreement”) by and between Prein & Newhof, Inc. (“P&N”), of 3355 Evergreen Drive, NE, Grand Rapids, MI 49525, and City of Muskegon (“Client”), of 933 Terrace Street, Muskegon, MI 49443.

WHEREAS Client intends to:

Apply for a MDOT TAP grant and construct a Non-Motorized Path on Sanford Street from Laketon Avenue to Apple Avenue and on Terrace Street from Apple Avenue to Shoreline Drive.

NOW THEREFORE, for and in consideration of the terms and conditions contained herein, the parties agree as follows:

ARTICLE 1 – DESIGNATED REPRESENTATIVES

Client and P&N each designate the following individuals as their representatives with respect to the Project.

For Client

Name: Leo Evans, P.E.
Title: Director of Public Works
Phone Number: 231-724-6920
Facsimile Number: 231-727-6904
E-Mail Address: leo.evans@shorelinecity.com

For P&N

Name: Barbara Marczak, P.E.
Title: Team Leader
Phone Number: 231-798-0101
Facsimile Number: 231-798-0337
E-Mail Address: bmarczak@preinnewhof.com

ARTICLE 2 – GENERAL CONDITIONS

This Agreement consists of this Professional Services Agreement and the following documents which by this reference are incorporated into and made a part of this Agreement.

- ☐ P&N Standard Terms and Conditions for Professional Services
- ☒ P&N Proposal dated December 23, 2021
- ☒ P&N Standard Rate Schedule
- ☐ P&N Supplemental Terms and Conditions
- ☒ Other: P&N Modified Standard Terms and Conditions for Professional Services (Limitation of Liability)

ARTICLE 3 – ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT:

3355 Evergreen Drive, NE Grand Rapids, MI 49525 t.616-364-8491 f. 616-364-6955 www.preinnewhof.com

Client hereby requests, and P&N hereby agrees to provide, the following services:

- ☒ P&N Scope of Services per Proposal dated December 23, 2021
- ☐ Scope of Services defined as follows:

NA

ARTICLE 4 – COMPENSATION:

- ☐ Lump Sum for Services Described in Article 3 above - \$.
Additional services to be billed per P&N's Standard Rate Schedule in effect on the date the additional service are performed.
- ☐ Hourly Billing Rates plus Reimbursable Expenses per P&N's Standard Rate Schedule in effect on the date services are performed.
- ☒ Other: Hourly rates and expenses as described in the December 23, 2021 proposal. Maximum not to exceed \$158,700 without City of Muskegon authorization.

ARTICLE 5 – ADDITIONAL TERMS (If any)

None

This Agreement constitutes the entire Agreement between P&N and Client and supersedes all prior written or oral understandings. This Agreement may not be altered, modified or amended, except in writing properly executed by authorized representatives of P&N and Client.

Accepted for:

Accepted for:

Prein&Newhof, Inc.

City of Muskegon

By: _____

By: _____

Printed Name: Jason Washler, P.E.

Printed Name: Leo Evans, P.E.

Title: Vice President

Title: Director of Public Works

Date: December 23, 2021

Date: _____

Standard Terms & Conditions

- A. General** - As used in this Prein&Newhof Standard Terms and Conditions for Professional Services (hereinafter “Terms and Conditions”), unless the context otherwise indicates: the term “Agreement” means the Professional Services Agreement inclusive of all documents incorporated by reference including but not limited to this P&N Standard Terms and Conditions for Professional Services; the term “Engineer” refers to Prein & Newhof, Inc.; and the term “Client” refers to the other party to the Professional Services Agreement.

These Terms and Conditions shall be governed in all respects by the laws of the United States of America and by the laws of the State of Michigan.

- B. Standard of Care** - The standard of care for all professional and related services performed or furnished by Engineer under the Agreement will be the care and skill ordinarily used by members of Engineer’s profession of ordinary learning, judgment or skill practicing under the same or similar circumstances in the same or similar community, at the time the services are provided.
- C. Disclaimer of Warranties** - Engineer makes no warranties, expressed or implied, under the Agreement or otherwise.
- D. Construction/Field Observation** - If Client elects to have Engineer provide construction/field observation, client understands that construction/field observation is conducted to reduce, not eliminate the risk of problems arising during construction, and that provision of the service does not create a warranty or guarantee of any type. In all cases, the contractors, subcontractors, and/or any other persons performing any of the construction work, shall retain responsibility for the quality and completeness of the construction work and for adhering to the plans, specifications and other contract documents.
- E. Construction Means and Methods** - Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for any safety precautions and programs in connection with the construction work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the construction work, or for the failure of any of them to carry out the construction work in accordance with the plans, specifications or other contract documents.
- F. Opinions of Probable Costs** – Client acknowledges that Engineer has no control over market or contracting conditions and that Engineer’s opinions of costs are based on experience, judgment, and information available at a specific period of time. Client agrees that Engineer makes no guarantees or warranties, express or implied, that costs will not vary from such opinions.
- G. Client Responsibilities**
1. Client shall provide all criteria, Client Standards, and full information as to the requirements necessary for Engineer to provide the professional services. Client shall designate in writing a person with authority to act on Client’s behalf on all matters related to the Engineer’s services. Client shall assume all responsibility for interpretation of contract documents and construction observation/field observation during times when Engineer has not been contracted to provide such services and shall waive any and all claims against Engineer that may be connected thereto.
 2. In the event the project site is not owned by the Client, the Client must obtain all necessary permission for Engineer to enter and conduct investigations on the project site. It is assumed that the Client possesses all necessary permits and licenses required for conducting the scope of services. Access negotiations may be performed at additional costs. Engineer will take reasonable precaution to minimize damage to land and structures with field equipment. Client assumes responsibility for all costs associated with protection and restoration of project site to conditions existing prior to Engineer’s performance of services.
 3. The Client, on behalf of all owners of the subject project site, hereby grants permission to the Engineer to utilize a small unmanned aerial system (sUAS) for purposes of aerial mapping data acquisition. The Client is responsible to provide required notifications to the property owners of the subject project site and affected properties where the sUAS services will be performed. The Engineer will operate the sUAS in accordance with applicable State and Federal Laws.
- H. Hazardous or Contaminated Materials/Conditions**
1. Client will advise Engineer, in writing and prior to the commencement of its services, of all known or suspected Hazardous or Contaminated Materials/Conditions present at the site.
 2. Engineer and Client agree that the discovery of unknown or unconfirmed Hazardous or Contaminated Materials/Conditions constitutes a changed condition that may require Engineer to renegotiate the scope of or terminate its services. Engineer and Client also agree that the discovery of said Materials/Conditions may make it necessary for Engineer to take immediate measures to protect health, safety, and welfare of those performing Engineer’s services. Client agrees to compensate Engineer for any costs incident to the discovery of said Materials/Conditions.

3. Client acknowledges that Engineer cannot guarantee that contaminants do not exist at a project site. Similarly, a site which is in fact unaffected by contaminants at the time of Engineer's surface or subsurface exploration may later, due to natural phenomena or human intervention, become contaminated. The Client waives any claim against Engineer, and agrees to defend, indemnify and hold Engineer harmless from any claims or liability for injury or loss in the event that Engineer does not detect the presence of contaminants through techniques commonly employed.
4. The Client recognizes that although Engineer is required by the nature of the services to have an understanding of the laws pertaining to environmental issues, Engineer cannot offer legal advice to the Client. Engineer urges that the Client seek legal assistance from a qualified attorney when such assistance is required. Furthermore, the Client is cautioned to not construe or assume that any representations made by Engineer in written or conversational settings constitute a legal representation of environmental law or practice.
5. Unless otherwise agreed to in writing, the scope of services does not include the analysis, characterization or disposal of wastes generated during investigation procedures. Should such wastes be generated during this investigation, the Client will contract directly with a qualified waste hauler and disposal facility.

I. Underground Utilities – To the extent that the Engineer, in performing its services, may impact underground utilities, Engineer shall make a reasonable effort to contact the owners of identified underground utilities that may be affected by the services for which Engineer has been contracted, including contacting the appropriate underground utility locating entities and reviewing utility drawings provided by others. Engineer will take reasonable precautions to avoid damage or injury to **underground** utilities and other underground structures. Client agrees to hold Engineer harmless for any damages to below ground utilities and structures not brought to Engineers attention and/or accurately shown or described on documents provided to Engineer.

J. Insurance

1. Engineer will maintain insurance for professional liability, general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Engineer. Client will maintain insurance for general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Client. Upon request, Client and Engineer shall each deliver certificates of insurance to the other evidencing their coverages.
2. Client shall require Contractors to purchase and maintain commercial general liability insurance and other insurance as specified in project contract documents. Client shall cause Engineer, Engineer's consultants, employees, and agents to be listed as additional insureds with respect to any Client or Contractor insurances related to projects for which Engineer provides services. Client agrees and must have Contractors agree to have their insurers endorse these policies to reflect that, in the event of payment of any loss or damages, subrogation rights under these Terms and Conditions are hereby waived by the insurer with respect to claims against Engineer.

K. Limitation of Liability - The total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants, whether jointly, severally or individually, to Client and anyone claiming by, through, or under Client, for any and all injuries, losses, damages and expenses, whatsoever, arising out of, resulting from, or in any way related to the Project or the Agreement, including but not limited to the performance of services under the Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, expressed or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, consultants, or any of them, shall not exceed the amount of the compensation paid to Engineer under this Agreement, ~~or the sum of fifty thousand dollars and no cents (\$50,000.00), whichever is less.~~ Recoverable damages shall be limited to those that are direct damages. Engineer shall not be responsible for or held liable for special, indirect or consequential losses or damages, including but not limited to loss of use of equipment or facility, and loss of profits or revenue.

Client acknowledges that Engineer is a corporation and agrees that any claim made by Client arising out of any act or omission of any director, officer, or employee of Engineer, in the execution or performance of the Agreement, shall be made against Engineer and not against such director, officer, or employee.

L. Documents and Data

1. All documents prepared or furnished by Engineer under the Agreement are Engineer's instruments of service, and are and shall remain the property of Engineer.
2. Hard copies of any documents provided by Engineer shall control over documents furnished in electronic format. Client recognizes that data provided in electronic format can be corrupted or modified by the Client or others, unintentionally or otherwise. Consequently, the use of any data, conclusions or information obtained or derived from electronic media provided by Engineer will be at the Client's sole risk and without any liability, risk or legal exposure to Engineer, its employees, officers or consultants.

3. Any extrapolations, conclusions or assumptions derived by the Client or others from the data provided to the Client, either in hard copy or electronic format, will be at the Client's sole risk and full legal responsibility.
- M. Differing Site Conditions** - Client recognizes that actual site conditions may vary from the assumed site conditions or test locations used by Engineer as the basis of its design. Consequently, Engineer does not guarantee or warrant that actual site conditions will not vary from those used as the basis of Engineer's design, interpretations and recommendations. Engineer is not responsible for any costs or delays attributable to differing site conditions. .
- N. Terms of Payment** - Unless alternate terms are included in the Agreement, Client will be invoiced on a monthly basis until the completion of the **Project**. All monthly invoices are payable within 30 days of the date of the invoice. Should full payment of any invoice not be received within 30 days, the amount due shall bear a service charge of 1.5 percent per month or 18 percent per year plus the cost of collection, including reasonable attorney's fees. If Client has any objections to any invoice submitted by Engineer, Client must so advise Engineer in writing within fourteen (14) days of receipt of the invoice. Unless otherwise agreed, Engineer shall invoice Client based on hourly billing rates and direct costs current at the time of service performance. Outside costs such as, but not limited to, equipment, meals, lodging, fees, and subconsultants shall be actual costs plus 10 percent. In addition to any other remedies Engineer may have, Engineer shall have the absolute right to cease performing any services in the event payment has not been made on a current basis.
- O. Termination** - Either party may terminate services, either in part or in whole, by providing 10 calendar days written notice thereof to the other party. In such an event, Client shall pay Engineer for all services performed prior to receipt of such notice of **termination**, including reimbursable expenses, and for any shut-down costs incurred. Shut-down costs may, at Engineer's discretion, include expenses incurred for completion of analysis and records necessary to document Engineer's files and to protect its professional reputation.
- P. Severability and Waiver of Provisions** - Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and P&N, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable **provision** that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the Agreement.
- Q. Dispute Resolution** - If a dispute arises between the parties relating to the Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:
1. Prior to commencing a lawsuit, the parties must attempt mediation to resolve any dispute. The parties will jointly appoint a mutually acceptable person not affiliated with either of the parties to act as mediator. If the parties are unable to agree on the mediator within twenty (20) calendar days, they shall seek assistance in such regard from the Circuit Court of the State and County wherein the Project is located, who shall appoint a mediator. Each party shall be responsible for paying all costs and expenses incurred by it, but shall split equally the fees and expenses of the mediator. The mediation shall proceed in accordance with the procedures established by the mediator.
 2. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within thirty (30) calendar days, then, upon seven (7) calendar days' written notice to the other party, either party may pursue any other available remedy.
 3. In the event of any litigation arising from the Agreement, including without limitation any action to enforce or interpret any terms or conditions or performance of services under the Agreement, Engineer and Client agree that such action will be brought in the District or Circuit Court for the County of Kent, State of Michigan (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Western District of Michigan), and the parties hereby submit to the exclusive jurisdiction of said court.
- R. Force Majeure** - Engineer shall not be liable for any loss or damage due to failure or delay in rendering any services called for under the Agreement resulting from any cause beyond Engineer's reasonable control.
- S. Assignment** - Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
- T. Modification** - The Agreement may not be modified except in writing signed by the party against whom a modification is sought to be enforced.
- U. Survival** - All express representations, indemnifications, or limitations of liability included in the Agreement shall survive its completion or termination for any reason.
- V. Third-Party Beneficiary** - Client and Engineer agree that it is not intended that any provision of this Agreement establishes a third party beneficiary giving or allowing any claim or right of action whatsoever by a third party.

Current Fee Schedule

Prein&Newhof bills for each hour spent on a project at the hourly rate of the employees assigned. Mileage is charged at \$0.60 per mile. Direct expenses and sub-consultant costs are billed at invoice plus a 10% handling charge.

Identified below are the hourly rates for various employee classifications:

Employee Classification	Hourly Billing Rate*
Senior Consultant	\$182
Senior Project Manager II	\$168
Senior Project Manager	\$154
Project Manager, Senior Engineer III, Landscape Architect III, Senior Technician V	\$141
Senior Engineer II, Geologist, Airport Planner, Lab Manager, Senior Technician IV	\$132
Senior Engineer, Landscape Architect II, Surveyor II, Senior Technician III	\$124
Engineer II, Senior Technician II, Senior Office Technician	\$116
Engineer, Surveyor, Senior Construction Observer, Senior Technician	\$107
Landscape Architect, Construction Observer II, Technician IV	\$98
Construction Observer, Technician III, Lab Technician, Office Technician	\$90
Technician II	\$79
Technician	\$67

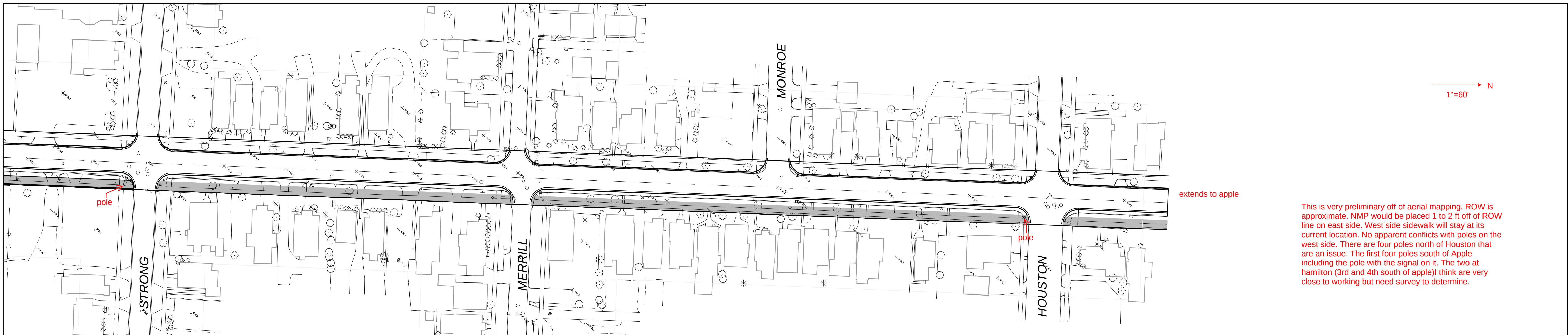
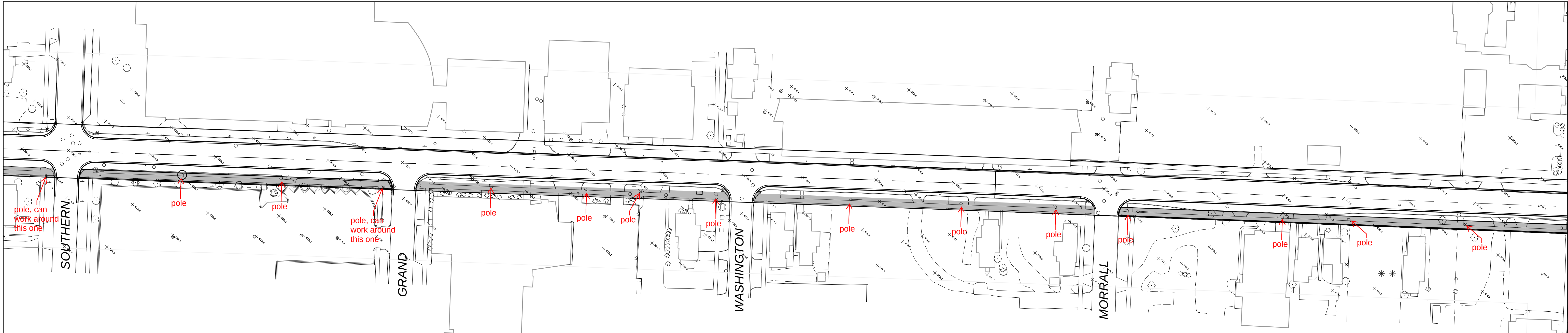
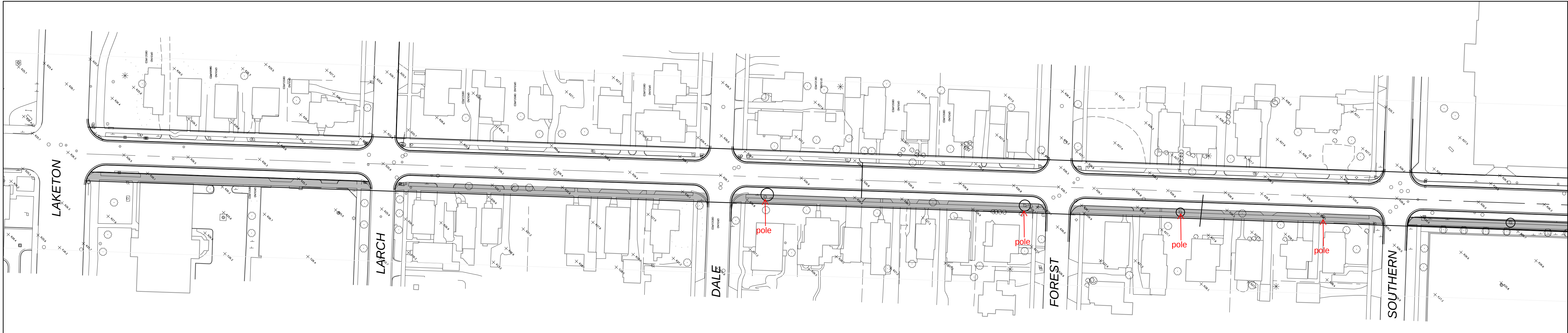
*Hourly rates are typically adjusted yearly.

NOTE: Includes overhead, fringe benefits and profit; effective January, 2022.

Professional Hours Worksheet

City of Muskegon - SRF/DWRF

Staff Member	Sen. PM Marczak	Sen. PM Prein	Sen. PM	PM Hulst	Sen Eng Malek	Eng. Staff	CADD/GIS Staff	Observer TBD	Sen Eng Tezak	Eng II TBD	Survey Staff	Expense		Mileage	Total Cost
												Item	Cost		
Preliminary Design															
TAP Grant			15	15			10			24					\$8,600
Preliminary Engineering				2											\$300
Program App				2											\$300
NEPA Documentation			2	1						12			\$1,500		\$3,500
Grade Inspection				2						2					\$500
Review Meeting	2			2		2								35	\$900
Preliminary Subtotals	2	0	17	24	0	2	10	0	0	38	0		\$1,500	35	\$14,100
Design															
NMP Design Laketon to Apple				2			105			20					\$17,400
MOT Phasing							10			2					\$1,600
NMP Design Apple to Shoreline				1			108			10					\$16,500
Railroad ROW Permit				2	10		16								\$3,800
Shoreline Signal Improvements				1					47	38					\$10,400
MDOT ROW Permit				1	10										\$1,400
SESC Permit Application				1						1					\$300
Special Provisions				1						10					\$1,300
Electrical Scoping				1									\$2,500.00	15	\$2,900
Meeting w/ Client (2)				3						3				35	\$800
Cost Estimate				1						5					\$700
QA/QC	2	2		2			2			2					\$1,700
Design Subtotals	2	2	0	16	20	0	241	0	47	91	0		\$2,500	50	\$58,800
Bid Phase															
Bid Phase Subtotals	0	0	0	0	0	0	0	0	0	0	0		\$0	0	\$0
Construction Engineering Services															
NMP															
Preconstruction Meeting and Minutes				3	3									20	\$800
Preconstruction Video (2 hours)								2						10	\$200
Construction Staking											33				\$6,100
Construction Staking NMP											33				\$6,100
NMP CO (2 weeks, 10 days)								90						100	\$8,300
Sanford CO (8 weeks, 40 days)								360				Misc. Test.	\$5,000	350	\$38,800
Project Administration	4			8	40										\$6,800
Respond to RFIs				2	5										\$900
Change Orders (3 per contract)				1	9										\$1,300
Pay Apps (5)				1	12										\$1,600
Progress Meetings (monthly per contract)				2	4									20	\$800
Punch List Visits (3)				2	2			5						20	\$1,000
Record Plans/Closeout				5	35		5								\$5,800
2024 Rates (+6.0%)															\$7,300
Construction Engineering Subtotals	4	0	0	24	110	0	5	457	0	0	66		\$5,000	520	\$85,800
Project Grand Total	8	2	17	64	130	2	256	457	47	129	66		\$9,000	605	\$158,700



CITY OF MUSKEGON / ENGINEERING DEPARTMENT PRELIMINARY PROJECT COST ESTIMATE Estimated By: Leo Evans (2021-08-31) Project Number: TBD Project Location: Laketon - Lakeshore Trail Connector Project Description: New seperated path construction	General Notes Project Length = 1.54 Miles (8,130 FT) including 21 Street Crossings Project Design = 10 FT Wide HMA Trail, 3" HMA over 6" Aggregate Base Traffic Control = Minimal Impact Permanent Signs & Pavement Markings = Medium Impact Prevailing Wage = Yes, Packaged with SRF/DWRF work on Sanford Target Construction Year = 2023
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Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total	Notes
1	1500001	Mobilization, Max (10% of Project Total)	LSUM	1	\$ 75,000.00	\$ 75,000.00	Estimated @ \$75,000, Approximately 10% of Pre-LSUM Total
2	2040020	Curb and Gutter, Rem	Ft	1050	\$ 8.00	\$ 8,400.00	Estimated 25 FT Per quadrant x 2 Quadrants per Intersection x 21 Intersections
3	2040055	Sidewalk, Rem	Syd	467	\$ 10.00	\$ 4,670.00	Estimated 11.1 SYD Per quadrant x 2 Quadrants per Intersection x 21 Intersections
4	208XXXXX	Erosion Control (LSUM Estimate - 1% of Project Total)	LSUM	1	\$ 7,500.00	\$ 7,500.00	Estimated @ \$7,500, Approximately 1% of Pre-LSUM Total
5	8030010	Detectable Warning Surface	Ft	420	\$ 35.00	\$ 14,700.00	Estimated 10 FT per quadrant x 2 quadrants per Intersection x 21 Intersections
6	8030036	Sidewalk Ramp, Conc, 6 inch	Sft	4200	\$ 10.00	\$ 42,000.00	Estimated 100 SFT per quadrant x 2 quadrants per intersection x 21 Intersections
7	8060010	Shared Use Path, Aggregate	Ton	3300	\$ 40.00	\$ 132,000.00	Estimated (135 LBS/CFT) x 12 FT wide x 8,130 FT long x 0.5 FT deep x (1 Ton / 2000 LBS) + Rounding
8	8060030	Shared Use Path, Grading	Ft	8130	\$ 20.00	\$ 162,600.00	Length of Project
9	8060040	Shared Use Path, HMA	Ton	2000	\$ 140.00	\$ 280,000.00	Estimated 10 FT x 8,130 FT X (1 SYD / 9 SFT) x (440 LBS / SYD) x (1 Ton / 2000 LBS) + Rounding
10	811XXXX	Permanent Traffic Control (LSUM Estimate - 3% of Project Total / Medium)	LSUM	1	\$ 22,500.00	\$ 22,500.00	Estimated @ \$22,500, Approximately 3% of Pre-LSUM Total
11	812XXXX	Temporary Traffic Control (LSUM Estimate - 2% of Project Total / Minimal)	LSUM	1	\$ 15,000.00	\$ 15,000.00	Estimated @ \$15,000, Approximately 2% of Pre-LSUM Total
12	816XXXX	Site Restoration	Syd	18100	\$ 5.00	\$ 90,500.00	Estimated 20 FT x 8,130 FT x (1 SYD / 9 SFT) + Rounding
				TRAIL BID PACKAGE SUBTOTAL		\$ 854,870.00	

Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total	Notes
13	N/A	Inflation (10% = 5% / Year x 2 Years)	LSUM	1	\$ 90,000.00	\$ 90,000.00	Estimated @ \$90,000 (Approximately 10% of Post Bid LSUM Items)
14	N/A	Contingency (10%)	LSUM	1	\$ 90,000.00	\$ 90,000.00	Estimated @ \$90,000 (Approximately 10% of Post Bid LSUM Items)
15	N/A	Engineering (15%)	LSUM	1	\$ 135,000.00	\$ 135,000.00	Estimated @ \$135,000 (Approximately 15% of Post Bid LSUM Items)
				TRAIL SOFT COSTS SUBTOTAL		\$ 315,000.00	

Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total	Notes
16	N/A	Landscaping (5%)	LSUM	1	\$ 45,000.00	\$ 45,000.00	
18	N/A	Kiosk & Informational Signing	LSUM	1	\$ 50,000.00	\$ 50,000.00	
19	N/A	Trail Lighting	LSUM	1	\$ 500,000.00	\$ 500,000.00	Based on scaled version of system being installed on Laketon Trail between Peck & 7th.
				OPTIONAL ADD ONS		\$ 595,000.00	

PROJECT TOTAL	\$ 1,764,870.00
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WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: Prein & Newhoff – Sanford Street Engineering Assistance Amendment
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to approve Amendment #001 of the Professional Services Agreement (PSA) with Prein & Newhof related to construction of a non-motorized pathway.	
Detailed Summary: This item pairs with another item on the agenda. See also the request for approval of a Professional Services Agreement with Prein & Newhof for the Laketon/Lakeshore Trail Connector. The detailed information can be found under that item.	
Amount Requested: -\$61,000 (FY21/22, 22/23 & 23/24)	Amount Budgeted: \$400,000 (FY 21/22 – Ref. 9/14/21 Comm. Agenda)
Fund(s) or Account(s): 590/591	Fund(s) or Account(s): 590/591
Recommended Motion: Authorize staff to sign the amendment to the professional services agreement with Prein & Newhof related to removing the non-motorized pathway work from the Sanford Street project.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Professional Services Agreement Amendment

Amendment Number : 1

Project Name: SRF/DWRF Project – Sanford and Hadden Streets

P&N Representative: Barbara E. Marczak, P.E.

Client: City of Muskegon

Client Representative: Leo Evans, P.E.

AGREEMENT: The Agreement Amendment modifies the original agreement for professional services dated: August 30, 2021

Client hereby requests and authorizes a change in services in accordance with the following:

SCOPE OF SERVICES MODIFICATION:

Reduced Design and Construction phase services per letter dated December 23, 2021 (attached).

SCHEDULE OF SERVICES MODIFICATION:

NA

BUDGET MODIFICATION:

\$61,000 decrease. Revised budget will be \$800,200.00.

METHOD OF COMPENSATION:

- ☐ Lump Sum for Defined Scope of Services
- ☒ Hourly Billing Rates plus Reimbursable Expenses
- ☐ Other:

ADDITIONAL PROVISIONS (IF ANY):

None.

Prepared by:
Prein&Newhof, Inc.

Accepted for:
City of Muskegon

By: _____
Print Name: Jason Washler, P.E.
Title: Vice President
Date: _____

By: _____
Print Name: Leo Evans, P.E.
Title: Director of Public Works
Date: _____

December 23, 2021

Mr. Leo Evans, P.E.
City of Muskegon
Department of Public Works
1350 Keating Avenue
Muskegon, MI 49442

Re: Professional Services Amendment 1
Removal of Non-Motorized Path from scope

Dear Mr. Evans:

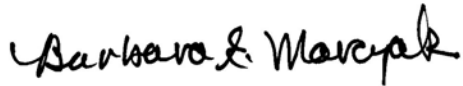
We have reviewed your request to eliminate the design and construction phase services of the proposed non-motorized path from this project. This request will not impact our topographic survey and Geotech scopes for this project.

We have determined the fee reduction for the reduced scope is \$61,000.00.

Please contact us if you have any questions.

Sincerely,

Prein&Newhof



Barbara E. Marczak, P.E.

Enclosures: Professional Services Amendment



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: April 13 th , 2021	Title: Traffic Control Order
Submitted By: Doug Sayles/Leo Evans	Department: Traffic/Engineering
Brief Summary: Staff is requesting approval of Traffic Control Orders 72 and 73.	
Detailed Summary: Traffic Control Order #72 includes a new Stop sign on Diana Avenue at the approach to Ransom Street. This is a tee-intersection that was previously uncontrolled. Traffic Control Order #73 includes placement of Yield signs on Robinson Avenue at the approach to Palmer Street. This a 4-leg intersection that was previously uncontrolled.	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: To approve traffic control orders #72 and #73 and authorize staff to make the necessary signing changes.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

City of Muskegon

Traffic Control Order

No. 72-(2021)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Installation of "Stop Sign" on the Northeast corner of Diana Avenue @ Ransom Street.*

Location: *Diana Avenue @ Williams Street.*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____

By: _____
Traffic Supervisor

Date completed: ____/____/____

By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action

City of Muskegon

Traffic Control Order

No. 73-(2021)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Installation of "Yield Signs" on the Northeast and Southwest corners of Robinson Street @ Palmer Avenue.*

Location: *Robinson Street @ Palmer Avenue.*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____

By: _____
Traffic Supervisor

Date completed: ____/____/____

By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: 2021-2022 School Resource Officer Agreement
Submitted By: Director Jeffrey Lewis	Department: Public Safety
Brief Summary: School Resource Officer Agreement	
Detailed Summary: Review and approve the School Resource Officer Agreement proposed for employment of one Muskegon Police Department officer for the 2021-2022 school year. This agreement includes a 3% increase from 2021, for a total of \$24,916.73 paid to the City of Muskegon between September 2021 and June 2022.	
Amount Requested: NA	Amount Budgeted: NA
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve contract with Muskegon High School for the 2021-2022 School Resource Officer Agreement.	
Check if the following Departments need to approve the item first: Police Dept. ☒ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

COMMUNITY OFFICER & MUSKEGON PUBLIC SCHOOLS

(Commission Action No.)

AGREEMENT **2021-2022**

This Agreement is effective **August 26, 2021** through **June 10, 2022**, between the City of Muskegon, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City"), and Muskegon Public Schools, of 1458 Fifth St., Muskegon, Michigan, 49441 ("MPS"), with reference to the following facts:

Background

A. City and MPS have determined that it is in each of their best interests to continue police services at the Muskegon High School ("MHS") and Muskegon Middle School.

B. City has agreed to provide a police officer to be on patrol at MHS and the Muskegon Middle School. At all times the officer assigned to work at MHS and Muskegon Middle School shall be a City police officer and, as such an employee of the City. Duties will be decided between mutual parties. However, it is agreed that a component of the role is to help establish a positive, safe learning environment at MHS and Muskegon Middle School and develop positive relationships with the student body.

C. MPS has agreed to pay the City a flat rate according to nine (9) months of service. The community officer will report to the MHS and Muskegon Middle School principal.

It is therefore agreed:

1. **Officer.** City shall provide a police officer to be on patrol at MHS and Muskegon Middle School during the published academic calendar year, commencing **August 26, 2021** (which shall not include any published vacation days or summer school sessions. i.e. Christmas break, mid-winter break, Thanksgiving break, Professional Development days, Good Friday, or Memorial Day). The officer shall be present at MHS and Muskegon Middle School during hours which are mutually agreeable between the City and MPS.

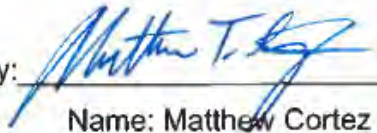
2. **Payment.** MPS shall pay **\$2,687.82** on the first of **EACH MONTH**, as invoiced, commencing **September 1, 2021** through **June 30, 2022**. Total payment will not exceed **\$24,916.73**

3. **Term: Termination.** The term of this Agreement shall be for one year from **August 26, 2021** through **June 10, 2021**, and may be renewed annually by mutual agreement. This Agreement may be terminated before the end of its term by subsequent written agreement, which shall be signed by both parties.

4. **Venue.** The parties agree that for purposes of any dispute in connection with this agreement, the Muskegon County Court shall have exclusive jurisdiction and venue.

Muskegon Public Schools

City of Muskegon

By: 
Name: Matthew Cortez
Title: Superintendent of Schools

Date: 7/27/21

By: _____

Name: Ken Johnson
Title: Mayor

Date: _____

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: Sale – 1461 Nolan Ave.
Submitted By: Hope Griffith	Department: Planning Department
Brief Summary: City staff is seeking authorization to sell the City owned vacant lot at 1461 Nolan Ave. to Aleschia Loughridge.	
Detailed Summary: Ms. Loughridge would like to purchase the City owned buildable lot at 1461 Nolan Ave. for \$3,675 (75% of the True Cash Value of \$4,900) plus half of the closing costs and the fee to register the deed. Ms. Loughridge will be constructing a single-family home on the property.	
Amount Requested: None.	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Authorize the Code Coordinator to complete the sale of 1461 Nolan Ave., as described in the attached purchase agreement and to have the Mayor and Clerk sign the deed.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is made January ____, 2022 ("Effective Date"), by and between the **CITY OF MUSKEGON**, a municipal corporation, with offices at 933 Terrace, Muskegon, Michigan 49440 ("Seller"), and **Aleschia Loughridge**, of 2140 Harding Ave, Muskegon, MI 49441 ("Buyer").

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, the real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title and interest in all adjoining public ways, located in the City of Muskegon, Muskegon County, Michigan ("Premises"), and specifically described as:

SEE ATTACHMENT A

Subject to the reservations, restrictions and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law.

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises shall be Three Thousand Six Hundred Seventy-Five and no/100 Dollars (\$3,675), payable in cash, money order, bank certified check at the closing.

3. **Taxes and Assessments.** All taxes and assessments that are due and payable at the time of Closing shall be paid by Seller prior to or at Closing. All taxes and special assessments that become due and payable after Closing shall be the responsibility of Buyer.

4. **Title Insurance.** Seller agrees to deliver to Buyer, on or before the closing date, a commitment for title insurance, issued by Transnation Title Insurance Company, for an amount not less than the purchase price stated in this Agreement, guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment is, in the sole discretion of Buyer, deemed unreasonable, Seller shall have forty-five (45) days from the date Seller is notified in writing of such unreasonableness of restriction and such unmarketability of title, to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale as herein provided, within ten (10) days of written notification thereof. If Buyer closes on the Premises, any objections to the title are deemed waived. If Seller fails to resolve such restrictions or remedy the title within the time above specified or fails to obtain satisfactory title insurance, this Agreement will be terminated at Buyer's option. The premium for the owner's title policy shall be paid by Seller.

5. **Covenant to Construct Improvements and Use.** Buyer acknowledges that, as part of the consideration inuring to the City, Buyer covenants and agrees to construct on the premises one (1) single-family home, up to all codes, within eighteen (18) months of the closing of this transaction. The home shall be substantially completed within eighteen (18) months and,

in the event said substantial completion has not occurred, or the restriction of this paragraph relating to tree removal is violated, in the sole judgment of the City, the property and all improvements then installed shall revert in title to the City, without any compensation or credit to Buyer, and free of all liens. The covenants in this paragraph shall survive the closing and run with the land.

6. **Survey.** Buyer at its own expense may obtain a survey of the Premises, and Buyer or its surveyor or other agents may enter the Premises for that purpose prior to Closing. If no survey is obtained, Buyer agrees that Buyer is relying solely upon Buyer's own judgment as to the location, boundaries and area of the Premises and improvements thereon without regard to any representations that may have been made by Seller or any other person. In the event that a survey by a registered land surveyor made prior to closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Purchase Agreement and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

7. **Condition of Premises and Examination by Buyer.** NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES SHALL OPERATE BETWEEN SELLER AND BUYER, AND BUYER EXPRESSLY WAIVES ANY AND ALL SUCH IMPLIED WARRANTIES. BUYER UNDERSTANDS AND AGREES THAT THE PREMISES ARE TAKEN "AS IS," SUBJECT TO THE EXPRESS COVENANTS, CONDITIONS AND/OR EXPRESS WARRANTIES CONTAINED IN THIS PURCHASE AGREEMENT. BUYER FURTHER SAYS THAT HE HAS PERSONALLY INSPECTED THE PREMISES AND IS SATISFIED WITH THE CONDITION OF THE LAND, AND THE BUILDINGS AND IMPROVEMENTS THEREON, AND THAT THE PROPERTY IS BEING PURCHASED AS A RESULT OF SUCH INSPECTION AND INVESTIGATION AND NOT DUE TO ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SELLER. SELLER KNOWS OF NO HAZARDOUS SUBSTANCES OR CONTAMINATION, AND BUYER WAIVES ANY CLAIM AGAINST SELLER IN THE EVENT SUCH SUBSTANCES ARE FOUND.

8. **Closing.** The closing date of this sale shall be on or before 90 days after the Effective Date ("Closing"). The Closing shall be conducted at Transnation Title Insurance Company, 570 Seminole Road, Ste. 102, Muskegon, MI 49444. If necessary, the parties shall execute an IRS closing report at the Closing.

9. **Delivery of Deed.** Seller shall execute and deliver a warranty deed to Buyer at Closing for the Premises.

10. **Affidavit of Title.** At the Closing, Seller shall deliver to Buyer an executed Affidavit of Title.

11. **Date of Possession.** Possession of Premises is to be delivered to Buyer by Seller on the date of Closing.

12. **Costs.** Seller shall be responsible to pay the Michigan transfer tax, if any, in the amount required by law. In addition, Seller shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the Premises, to the extent required by this Agreement. Buyer shall pay for the cost of recording the deed to be delivered at Closing as well as half of the closing costs.

13. **General Provisions.**

a. **Paragraph Headings.** The paragraph headings are inserted in this Agreement only for convenience.

b. **Pronouns.** When applicable, pronouns and relative words shall be read as plural, feminine or neuter.

c. **Merger.** It is understood and agreed that all understandings and agreements previously made between Buyer and Seller are merged into this Agreement, which alone fully and completely expresses the agreement of the parties.

d. **Governing Law.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan.

e. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their successors and assigns.

f. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

g. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for herein shall survive the Closing and continue in full force and effect after the consummation of this purchase and sale.

h. **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by Seller and Buyer.

The parties have executed this Real Estate Purchase Agreement on the date written below their names, to be effective as of the day and year first above written.

WITNESSES:

SELLER: CITY OF MUSKEGON

By _____

Ken Johnson, Mayor

Date: _____

By _____

Ann Marie Meisch, MMC, Clerk

Date: _____

BUYER: Aleschia Loughridge

Witness Name: _____

Date: _____

ATTACHMENT A

CITY OF MUSKEGON REVISED PLAT OF 1903 BLOCK 543 THAT PART OF LOT 7 DESCRIBED AS FOLLOWS COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 7 THEN SOUTH 39D 46M 55S WEST ALONG SOUTHEASTERLY RIGHT-OF-WAY OF NOLAN STREET A DISTANCE OF 142 FEET TO POINT OF BEGINNING THEN SOUTH 50D 18M 40S EAST ALONG A FOUND MONUMENTED LINE A DISTANCE OF 140 FEET THEN SOUTH 39D 46M 55S WEST A DISTANCE OF 79.95 FEET THEN NORTH 50D 18M 40S WEST A DISTANCE OF 140 FEET TO THE SOUTHEASTERLY LINE OF NOLAN STREET THEN NORTH 39D 46M 55S EAST ALONG SOUTHEREASTERLY RIGHT-OF-WAY OF NOLAN STREET A DISTANCE OF 79.95 TO POINT OF BEGINNING SAID PARCEL CONTAINS 11,142 SQUARE FEET & IS TOGETHER WITH AND SUBJECT TO ANY EASEMENTS OR RESERVATIONS OF RECORD OR APPARENT THEREOF.



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 1/11/2022	Title: 1095 Third Street RFP Response
Submitted By: Jake Eckholm	Department: Economic Development
Brief Summary: Catholic Charities is in the final stages of relocating from their former offices at 1095 Third Street to their new location. The department has received one response for the Request for Proposals that was approved by commission, and seeks commission approval to move forward with the developer in drafting a Purchase and Development Agreement.	
Detailed Summary: Over the last several months the City's Economic Development team has showed the former Catholic Charities site to a number of both local and regional potential developers. In the end, one developer, Suburban Property LLC, replied with a well composed and feasible development proposal. This developer has been working for some time on getting into the market in the Muskegon area, and has brought on well-regarded and credentialed architects and contractors. Staff has reviewed the proposal, and supports the program it contains for phased redevelopment of all three lots. The first phase would include the adaptive reuse of the existing building, with all three floors of the structure being used for market-rate apartments. The next phase would 8 two-story townhomes along Houston, and finally a 3-4 story mixed use building on the corner of Muskegon and Third.	
Amount Requested: \$0	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: A motion to name Suburban Property, LLC the Preferred Developer for the City-owned property at 1095 Third Street, and to direct staff to draft a purchase and development agreement for commission consideration.	
For City Clerk Use Only: Commission Action:	

Suburban Property, LLC, Integrated Architecture,
and Erhardt Construction



CITY OF MUSKEGON, MICHIGAN
1095 THIRD STREET
REDEVELOPMENT PROJECT
RFP RESPONSE





OCTOBER 22, 2021

**ATTN: ANN MEISCH, CITY CLERK
ANN.MEISCH@SHORELINECITY.COM
933 TERRACE STREET
MUSKEGON, MI 49440**

Dear Ms. Meisch,

Our project team is pleased to present our response to your RFP for the redevelopment of 1095 Third Street. My name is Shaun Burket and I will be the primary contact for our development team as we work through the selection process. My contact information is provided at this bottom of this transmittal. Our project team is comprised of the following:

- Shaun Burket, Project Developer
- Michael Corby, Integrated Architecture
- Ryan Formsma, Erhardt Construction

Our team is focused on providing attainable workforce housing in West Michigan communities and are confident that 1095 Third can be a vibrant housing opportunity in the City!

We are grateful for the opportunity to work with you and your team in Muskegon.

Respectfully,



Shaun Burket
Developer & Lead Entity
Representative
Suburban Property, LLC
(616) 291-1768
shaun@suburbanlandscapesmi.com



Mike Corby, FAIA LEED-AP
President
Integrated Architecture
(616) 574-0220
mcorby@intarch.com



Ryan Formsma
Vice President of Business Development
Erhardt Construction
(616) 825-2908
rformsma@erhardtcc.com

We serve our clients, employees,
and community by turning visions
into reality.

We listen, we engage, and we
deliver. The result is a ***distinctive***
construction, design, and
development experience.



08

QUALIFICATIONS & EXPERIENCE

24

PROPOSED DEVELOPMENT
VISION & PROGRAM

38

CONCEPTUAL FINANCIAL
STRUCTURE/STABILITY

The Hendrik
Apartment Building
(Integrated Architecture)

COMPANY OVERVIEWS



INTRODUCTION TO THE COMPANY & TEAM



SUBURBAN PROPERTY, LLC | DEVELOPER & LEAD ENTITY REPRESENTATIVE **Shaun Burket**

Ada, MI

Shaun has over 20 years of experience in acquisition, rehab, leasing, and property management. Since 2001, his firm has been responsible for managing over 25 properties in the West Michigan area. His expertise ranges from single family homes to large, urban apartment complexes.



INTEGRATED ARCHITECTURE | ARCHITECT **Mike Corby, FAIA, LEED-AP and President**

840 Ottawa Ave. NW | Grand Rapids, MI 49503

Integrated Architecture is a full service architecture firm that leads by design, aligning people and place with ideas and industry. We blend our knowledge of design with our understanding of how environments can shape behaviors and outcomes to create solutions for clients that respect the human impact of their life and work. By integrating architectural design, engineering, interior design, and landscape design services we create whole solutions that encompass human-centered design, solve real problems, and make lives better.



ERHARDT CONSTRUCTION | GENERAL CONTRACTOR **Ryan Formsma, Vice President of Business Development**

6060 Fulton St. East | Ada, MI 49301

Erhardt Construction is a general contractor, construction management, and design/build firm headquartered in West Michigan. Erhardt provides construction and facility solution services to commercial, residential, education, worship, municipal, and health care clients. We place strong emphasis on providing value and detail to every project we construct. The strength of our people, our professionalism, and our unique project management enable us to make an immediate and significant contribution to any construction project. Erhardt prides itself on serving its clients, employees and community by turning visions into a reality.

A high-end living room with a dark wood ceiling featuring exposed beams. A large abstract painting hangs above a fireplace with a dark frame. To the left is a dark blue cabinet with gold handles and a lamp. To the right is a tall dark blue shelving unit with a TV. In the foreground, there are two white armchairs with gold frames, a round coffee table with books, and a patterned ottoman. A large, starburst-style chandelier hangs from the ceiling. The floor is made of wide-plank wood.

QUALIFICATIONS & EXPERIENCE

East Grand Rapids
High-End Residence
(Erhardt Construction)



SUBURBAN
PROPERTY LLC

Education

Bachelor of Finance
Marquette University

Masters of Business Administration
Grand Valley State University

Professional Activities

- President of Suburban Landscapes, an outdoor construction and earth work firm located in Ada, MI

SHAUN BURKET

Developer & Lead Entity Representative

Project role includes all development responsibilities for the Muskegon Redevelopment.

Shaun has over 20 years of experience in acquisition, rehab, leasing, and property management. Since 2001, his firm has been responsible for managing over 25 properties in the West Michigan area. His expertise ranges from single family homes to large, urban apartment complexes. In 2010, Shaun purchased a property in Muskegon and quickly fell in love with the spirit of the community and the endless possibilities that the lakeshore has to offer. This redevelopment project would be the first for Shaun in the downtown Muskegon area and he looks forward to having a hand in shaping the downtown landscape.

CAREER EXPERIENCE

- Property Management for over 25 Properties in Grand Rapids, MI
- Development Property, Muskegon, MI
- Private Residence, Muskegon, MI
- Private Residence, Muskegon, MI
- Private Lakeshore Residence, Muskegon, MI
- Private Lakeshore Residence, Muskegon, MI
- Private Lakeshore Residence, Muskegon, MI
- Private Lakeshore Residence, Muskegon, MI



Education

Bachelor of Science & Master of Architecture
University of Michigan

Registrations/Certifications

- Registered Architect - State of Michigan, Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, N. Carolina, Ohio, Oregon, Pennsylvania, S. Dakota, Tennessee, Virginia, Washington DC, Wisconsin

Professional Activities

- National Council of Architectural Registration Board

MIKE CORBY, FAIA, LEED-AP

President & Managing Partner

Project role includes all design responsibilities for the Muskegon Redevelopment.

Mike Corby infuses design with practicality to create environments that respond to each client's unique needs. One of Michigan's first LEED-accredited architects, Mike is a leader in sustainable design and has redefined luxury to include abundant natural light, fresh air, people-centered space, and environmentally friendly materials. Under his guidance, IA has garnered three international, 10 national and 49 regional / local design awards, including the 2006 AIA MI Firm of the Year.

CAREER EXPERIENCE

- Studio Park, Grand Rapids, MI
 - 123 Tavern
 - The Listening Room
 - Celebration Cinema
 - Studio Park Lofts
 - Studio Parking
- 616 Lofts, Grand Rapids, MI
 - Lofts on Monroe
 - Lofts on Alabama
 - Lofts on Michigan
- Bridge and Stocking Mixed-Use Development, Multi-Story Retail, and Residential, Grand Rapids, Michigan
- Freyling Mendels Mixed-Use Development, Grand Rapids, Michigan
- Studio Park Mixed-Use Development, Grand Rapids, Michigan
- Michigan Street Demonstration Project, Grand Rapids, Michigan
- Elkenburg Redevelopment, South Haven, Michigan
- Traverse City Rotary Square, Traverse City, Michigan
- 234 Market Mixed-Use Development, Grand Rapids, Michigan
- The Rowe Mixed-Use Development, Grand Rapids, Michigan
- Gordon Food Service Corporate Headquarters LEED Silver, Wyoming, Michigan
- Consumers Energy John G. Russell Leadership Center LEED Certified, Grand Rapids, Michigan
- Herman Miller Master Plan, Zeeland, Michigan
- Meijer Corporate Headquarters, Walker, Michigan
- Whirlpool Benton Harbor Tech Center, Benton Harbor, Michigan



Education

Master of Architecture
Bachelor of Science
Lawrence Technological University

Registrations/Certifications

- Registered Architect - State of Michigan

DARREL DEHAAN, AIA

Director of Architecture, Senior Associate

Project role includes Project Management for the Muskegon Redevelopment.

Darrel joined Integrated Architecture's project management team in 2010 and offers well-grounded, diverse experience. Darrel's industry knowledge runs deep in his DNA, as his father is a retired civil engineer. Growing up in the industry, Darrel innately understands the key elements of project management. His responsiveness, keen sense of client understanding, and knack for facilitating complete collaboration is a trademark of his work. Darrel's project history includes more than \$800 million worth of construction with responsibilities ranging from design to project architecture and management.

CAREER EXPERIENCE

- The Rowe Mixed-Use Development, Grand Rapids, MI
- The Morton Mixed-Use Development, Grand Rapids, MI
- 601 West Mixed-Use Development, Grand Rapids, MI
- 234 Market Mixed-Use Development, Grand Rapids, MI
- D.A. Blodgett St. Johns, Grand Rapids, MI
- Calvary Church Renovation & Addition, Holland, MI
- The Stow Company Headquarters, Holland, MI
- Keystone Community Church, Grand Rapids, MI
- Western Michigan University College of Aviation Renovation & Expansion, Battle Creek, MI
- West Michigan Aviation Academy, Grand Rapids, MI
- Amway Aviation Complex, Grand Rapids, MI
- Cardinal Senior Management, Grand Rapids & Holland, MI
- Oliver Healthcare Packaging, Grand Rapids, MI
- The Potters School House, Grand Rapids, MI
- Whirlpool Kindercare Child Development Center, Benton Harbor, MI
- Whirlpool Tech Center, Benton Harbor, MI
- Commercial Tool & Die, Comstock Park, MI
- Herman Miller Mainsite, Zeeland, MI
- ADAC Automotive Corporate HQ, Grand Rapids, MI
- Early Advantage Childcare, Holland, MI
- Forty Pearl Tasting Room, Grand Rapids, MI



Education

Bachelor of Applied Science
Davenport University

Years Experience

28 total, 6 with Erhardt

Registrations/Certifications

- MIOSHA 30-hour Certification
- Licensed Building - State of MI
- Associate Broker - State of MI

Organizations

- Board Member for SECOM Resource Center
- Egypt Valley Country Club Member
- Volunteer for Junior Achievement of the Michigan Great Lakes

RYAN FORMSMA

Vice President of Business Development

Project role includes all construction responsibilities for the Muskegon Redevelopment.

Ryan is a results-driven leader with a 25+ year record of achievements and demonstrated successes, driving multi-million dollar projects while providing visionary product differentiation in a highly competitive market. Well-versed in all aspects of project management, including managing multiple accounts, negotiating contract terms, purchasing, accounts payable/receivable and customer service. Strong leader who trains and motivates individuals to their peak performance.

DUTIES

Assists clients with interior and exterior design, layout planning and value engineering. Responsible for pre-construction, project management, safety evaluations, purchasing negotiations, project bidding, scheduling, invoicing, quarterly audits, necessary insurance and licensing and close-out documentation.

CAREER EXPERIENCE

- Holland Home - Breton Homes, Kentwood, MI
- Cascade Hills Country Club Training Center, Cascade, MI
- Private Residence 1, Ada, MI
- Private Residence 2, Ada, MI
- Private Residence, Harbor Springs, MI
- Private Residence, East Grand Rapids, MI
- Amy Van Andel Library and Community Center, Ada, MI
- St. Robert of Newminster Parish Rectory, Ada, MI
- Villa in Oil Nut Bay, British Virgin Islands
- Regatta Drive Residence, Jupiter, FL
- St. John Paul II Catholic Church, Cedar Springs, MI
- City of Grand Rapids Water Treatment Plant Tunnel Rehabilitation, Grand Rapids, MI
- City of Grand Rapids Water Filtration Plant Filter Rehabilitation, West Olive, MI
- City of Grand Rapids Water Filtration Plant Standby Power, West Olive, MI
- St. Robert of Newminster Parish Rectory, Ada, MI
- Hub International, Grand Rapids, MI
- Nucraft Furniture, Grand Rapids, MI
- River Valley Credit Union, Ada, MI
- Roskam Baking, Multiple Projects, Kentwood, MI
- Universal Sign Systems, Grand Rapids, MI
- Founders Bank and Trust, Grand Rapids, MI
- First Community Bank, Grand Rapids, MI
- Macatawa Bay Yacht Club, Holland, MI
- Great Lakes Comnet, Holt, MI
- Ronald Blue Investments, Holland, MI



Years Experience

34 total, 23 with Erhardt

Registrations/Certifications

- U.S. Green Building Council
- LEED-Accredited Professional

Professional Activities

- American Society of Professional Estimators, West Michigan Chapter – Former Chapter President
- Construction Specifications Institute
- American Society of Professional Estimators

STAN ELENBAAS, LEED-AP

Vice President of Estimating

Project role includes all construction estimating responsibilities for the Muskegon Redevelopment.

Stan has 34 years of estimating and construction management experience, the last 23 with Erhardt Construction. Stan is responsible for estimating activities through all phases of pre-construction and construction from the earliest through the final assembly of the Guaranteed Maximum Price. Stan's success with the accuracy of Erhardt's early budget estimates has been extremely helpful to owners who need to make informed decisions about the direction of the design of their buildings.

CAREER EXPERIENCE

- Holland Home Cook Assisted Living, Kentwood, MI
- Holland Home Breton Terrace, Kentwood, MI
- Aquinas College Jarecki School of Advanced Learning, Grand Rapids, MI
- Aquinas College Wege Center Addition, Grand Rapids, MI
- Grand Valley State University AuSable Hall Addition, Allendale, MI
- Grand Valley State University Recreation Center, Allendale, MI
- Amy Van Andel Library and Community Center, Ada, MI
- Ray and Joan Kroc Community Center, Grand Rapids, MI
- Ottawa County 58th District Court, Grand Rapids, MI
- City of Holland Police Facility, Holland, MI
- Amway Corporation World Headquarters, Ada, MI
- Amway Corporation Visitors Center, Corporate Board Room, and Customer Distribution Center Offices, Ada, MI
- Calvary Church, Grand Rapids, MI
- Nucraft Furniture, Grand Rapids, MI
- Roskam Baking, Multiple Projects, Kentwood, MI
- MMPC, Grand Rapids, MI
- Autocam, Kentwood and Marshall, MI
- Power Line Supply Company, Reed City, MI



Education

B.B.A. Operations Management
The Ohio State University

Operations Management
Ferris State University

Years Experience
28 total

Organizations

- Board of Directors, Make-A-Wish Michigan
- Board Member, Ferris State University
- Board Member of Directors, Inner City Christian Federation (ICCF)
- State Board of Directors, MI, Fellowship of Christian Athletes
- Member, Rotary Club of Grand Rapids
- Mentor, Ottawa Hills High School

ARLEN-DEAN GADDY

Director of Market Strategy

Project role includes assisting the team in developing and maintaining community and trade partnerships throughout the duration of the Muskegon Redevelopment.

Arlen has over 25 years of experience in Business Development, Sales Operations and Consumer Affairs, previously serving as National Director of Business Development for Lambert & Co. and Leader of Client Relations for Varnum Consulting. He is a thought leader with proven experience creating successful community outreach, and perception conversion campaigns and initiatives while working shoulder-to-shoulder with clients and executive teams. Arlen's leadership experience ranges from Fortune 50 companies to high-growth regional enterprises.

DUTIES

Arlen guides Erhardt's vision for expansion across geographic and operational landscapes. His role includes creating opportunities with potential partners to further demonstrate Erhardt's commitment to build lasting client focused relationships through superior service, high value and consistent performance.

CAREER EXPERIENCE

LAMBERT & CO.

- Grand Rapids, Detroit, Lansing, New York City
- National Director of Business Development
- Led New Client Relationships in: Crisis Communication, Investor Relations, Investor Communications, Product Marketing.

VARNUM CONSULTING (A DIVISION OF VARNUM LAW)

- Grand Rapids, Detroit
- Leader of Client Relations
- Built Client Relationships in the healthcare, automotive, and financial service industries.

AT&T

- Michigan and Indiana
- Vice President of Sales - Outstate Michigan
- Held several leadership roles spanning a 20+ year career including: Directory Operations, Regulatory Affairs, Consumer Affairs, Sales Operations.



Erhardt Construction Leadership Team (left to right): Arlen-Dean Gaddy, Stan Elenbaas, Ben Wickstrom, Taggart Town, Ryan Formsma.



Lofts on Michigan
(Integrated Architecture)

STUDIO PARK

Location: Grand Rapids, Michigan
Size: Nine-Screen Theater
200-Seat Music Venue
12 Restaurants and Shops
933 Covered Spots
246 Lofts and Condos
Project Type: New Construction
Project Cost: \$132 Million (Phase One) + \$20 Million (Residential)
Completed: 2019

The Studio Park project includes a nine-screen theater, residential units, retail, office space and a parking ramp. This transformational project in downtown Grand Rapids is changing the shape of the arena district. Countless meetings with a variety of shareholders such as the developers, residents, and the City of Grand Rapids have resulted in an urban environment that will blend entertainment, residential, and commercial in the arena district.



LOFTS ON ALABAMA

Location: Grand Rapids, Michigan
Size: Existing: 67,538 SF
New Construction: 53,388 SF
Project Type: Renovation
Project Cost: \$18 Million
Completed: 2016

Lofts on Alabama marries the old with the new. Starting with the repurposing of the historic Hyatt building, a carriage factory built in 1903 on Grand Rapids’ West side. The 104 year old building was given a modern redesign while maintaining the character of the original building represented in every apartment. The historic factory turned housing development is close to downtown offering 61 studio, 1, 2, and 3 bedroom apartments. The building features a rooftop deck and underground parking.

The new construction features 39 studio, 1 and 2 bedroom apartments, a community room, outdoor terrace with BBQ area, and shared deck.



GVSU HOLTON-HOOKER LIVING LEARNING CENTER

Location: Allendale, Michigan
Size: 145,000 SF
Project Type: New Construction
Project Cost: \$33 Million

In April 2015, Erhardt began construction of a \$33 million residence hall and academic building for Grand Valley State University, a move that provided space for students seeking housing on the Allendale campus. It primarily serves freshmen students and is located near other residence halls that also serve first-year students

The new housing facility accommodates 498 students in traditional-style bedroom units. It also has study and lounge areas, laundry facilities, game room, outdoor recreational space, and light deli food service.

The building features an academic “living-learning center,” that includes three classrooms, computer lab, student interaction space, media room, and faculty offices. The residence hall was completed in August of 2016, ready to receive students for the new academic school year.



HOLLAND HOME SENIOR LIVING - BRETON RIDGE

Location: Kentwood, Michigan
Size: 452,000 SF
Project Type: New Construction
Project Cost: \$36 Million

This extension of Holland Home’s Breton Terrace campus includes a prestigious 7-story, 303,000 SF facility constructed in two phases. Phase I includes the construction of 123 resident condominiums, underground parking, and campus community space. With the construction of Phase II, an additional wing provides 149,000 SF and 92 resident condominiums. Community spaces include a chapel, exercise room, dining facility, and a retail store where light refreshments, such as ice cream or a cup of cappuccino can be enjoyed. There is also a billiards room and a library.

Extensive studies were conducted to determine the extent of affordable amenities that could be supported by the sales and revenue of the individual living units. Through value engineering and pricing, additional living units were designed as walkouts, lower level parking was designed under only two of the three building wings, and the balance of the parking requirements were located adjacent to the facility and supplemented by enclosed garages constructed at-grade.





Studio Park
Apartments & Entertainment
(Integrated Architecture)



PROPOSED DEVELOPMENT VISION & PROGRAM



DESIGN NARRATIVE FOR 1095 THIRD STREET

Our primary objective was to focus on a unique housing solution for the initial phase, which includes the repurposing of 1095 Third Street. This was crafted in the context of an overall redevelopment of the entire available parcel extending to Muskegon to the north and along Houston to the west. Our goals, we feel, align with your stated objectives. These include:

- Creative and attainable urban living option, with emphasis on livability and convenience.
- Maximizing density in unique adaptive reuse concept
- Activating an otherwise inactive corner with 24 hours use
- Re-establishing the corridor edges on Houston and Third Street

SITE DESIGN

The site master plan serves to re-establish the open edges along Houston and Third Streets with architecture to complement the existing two-story building that we will be converting to apartment uses.

To respond to the residential-scaled structures to the west on Houston, our plan includes eight two-story townhouses.

To the north, on Third Street/Muskegon corner, we envision a three to four-story mixed-use building with grade-level retail/restaurant space and apartments above.

Drop off, and parking will be provided internal to the site with access from Third Street and from Houston. Currently, 48 on-site parking spaces are planned in the master plan.

BUILDING DESIGN

Phase 1 of this project will be the adaptive reuse of what we will call 1095 Third, the existing two-story structure on the corner of Third and Houston. The main and upper levels total approximately 26,400 square feet, and the building includes a basement area of just under 26,00 square feet.

Our initial phase in the project was to get as much-needed housing as possible into 1095 Third. We chose to retain the existing primary interior circulation elements (stair and elevator) and create a new primary entrance for residents on the northwest corner, proximate to a proposed drop-off and the on-site parking area.

The main level is planned as (16) one-bedroom apartments and (1) studio for a total of 17 units. Most units will have in-unit washers and dryers; however, to maximize livable space and stay efficient, many units will be able to use communal laundry facilities. Each floor has accommodations for communal laundry, a small lounge space, and indoor secure bike storage.

Residents' primary entry will be a new entry lobby on the northwest corner of the building proximate to the existing elevator and stair and parking. This will include a small lobby with seating as well as a mail and package delivery room. A secure secondary entry will also be provided on the Houston Street elevator.

The upper level is a very similar layout with (17) one-bedroom units and (1) studio for a total of (18) units. The same accommodations will be provided on this level.

The basement level is currently planned with up to (12) units. (5) units are planned on the west side of the building, with a new light well provided to allow ample access to light and ventilation on the west wall. (7) units are potentially an option along the east elevation with a light well. The cost and logistics of these (7) units are still in the evaluation stage. On this level, in addition to the planned apartments, there will be additional resident storage areas available and accommodations for building mechanical systems.

Our exterior is still being evaluated; however, we anticipate paying homage in part to the original design with a fresh approach. We plan to emphasize the original horizontal expression with our material application and window placement. Our concept is an all residential one, so the exterior expressions on each floor are more similar.

The result will be a re-established, active community within the community, providing a new life to this existing City structure, with the overall vision to continue to bring much needed and attainable workforce housing and retail to this area of the city.





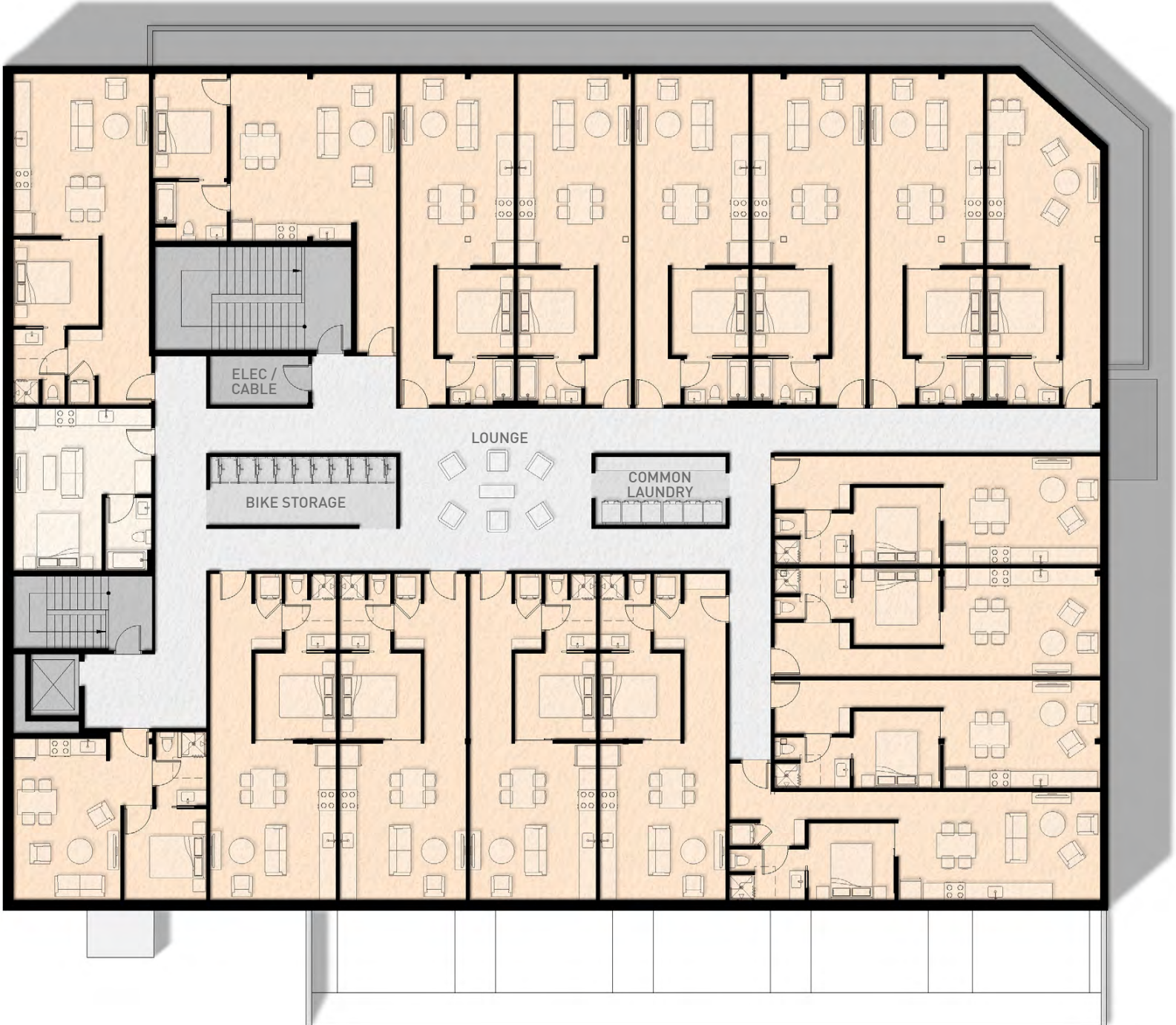
	TOTAL FLOOR AREA (GSF)	TOTAL UNIT AREA (GSF)	UNIT BREAKDOWN			
			STUDIO (360 SF)	1BR (540-760 SF)	2BR (1030 SF)	TOTAL
BASEMENT	12450	8470	-	10	2	12
1ST LEVEL	13300	10080	1	16	-	17
2ND LEVEL	13220	10600	1	17	-	18
TOTAL	38970	29150	2	43	2	47

- STUDIO UNIT
- 1-BEDROOM UNIT
- 2-BEDROOM UNIT



	TOTAL FLOOR AREA (GSF)	TOTAL UNIT AREA (GSF)	UNIT BREAKDOWN			
			STUDIO (360 SF)	1BR (540-760 SF)	2BR (1030 SF)	TOTAL
BASEMENT	12450	8470	-	10	2	12
1ST LEVEL	13300	10080	1	16	-	17
2ND LEVEL	13220	10600	1	17	-	18
TOTAL	38970	29150	2	43	2	47

- STUDIO UNIT
- 1-BEDROOM UNIT
- 2-BEDROOM UNIT



	TOTAL FLOOR AREA (GSF)	TOTAL UNIT AREA (GSF)	UNIT BREAKDOWN			
			STUDIO (360 SF)	1BR (540-760 SF)	2BR (1030 SF)	TOTAL
BASEMENT	12450	8470	-	10	2	12
1ST LEVEL	13300	10080	1	16	-	17
2ND LEVEL	13220	10600	1	17	-	18
TOTAL	38970	29150	2	43	2	47

- STUDIO UNIT
- 1-BEDROOM UNIT
- 2-BEDROOM UNIT



CONCEPT PLAN | 2ND LEVEL





616 Lofts on Michigan
(Integrated Architecture)

FINANCIAL STABILITY



FINANCIAL STABILITY OF SUBURBAN PROPERTY, LLC

Suburban Property, LLC has over 15 years of experience. Further information is available to discuss in-person.

LEGAL FIRM NAME AND HEADQUARTERS/LOCAL ADDRESS

Suburban Property, LLC

9500 Cascade Road SE
Ada, MI 49301

BUSINESS STATUS

Privately-Owned LLC
Established 2005 in Michigan

KEY FIRM CONTACT NAME(S)

Shaun Burket

Owner

FINANCIAL STABILITY OF INTEGRATED ARCHITECTURE

Integrated Architecture, LLC was incorporated in 1988 and has experienced over 33 years of growth and prosperity. The President of the company is one of the two original founders, Michael Corby. He is nationally recognized and licensed in several states. Integrated Architecture operates with conservative financial principals and team management that is committed to profitably, positive cash flow, and low debt service. The company maintains strong credit relations and has a high liquidity ratio.

LEGAL FIRM NAME AND HEADQUARTERS/LOCAL ADDRESS

Integrated Architecture, LLC

840 Ottawa Avenue
Grand Rapids, MI 49503
p: 616-574-0220
f: 616-574-0953
www.intarch.com

BUSINESS STATUS

Privately-Owned LLC
Established 1988 in Michigan

KEY FIRM CONTACT NAME(S)

Mike Corby, FAIA, LEED AP

President

Tim Mustert, AIA

Architectural Principal

Scott Vyn, LEED AP

Design Principal

Freyling Mendels
Mixed Use Development
(Integrated Architecture)



FINANCIAL STABILITY OF ERHARDT CONSTRUCTION

Erhardt Construction was founded in 1962 and has experience with urban projects dating back to the 1970s. Please review the letter on page 43 stating our financial capabilities and bonding capacity. Further information is available to discuss in-person.

LEGAL FIRM NAME AND HEADQUARTERS/LOCAL ADDRESS

Erhardt Construction Company

6060 Fulton Street East

Ada, MI 49301

p: 616-676-1222

f: 616-676-1676

www.erhardtcc.com

BUSINESS STATUS

Corporation

Established 1962 in Michigan

KEY FIRM CONTACT NAME(S)

Ben Wickstrom, P.E.

President & CEO

Taggart Town

Vice President

Ryan Formsma

Vice President of Business Development

Stan Elenbaas

Vice President of Estimating

Arlen-Dean Gaddy

Director of Market Strategy



Christopher J. Ashley
Account Executive
Travelers Bond & Financial Products
1441 W. Long Lake Rd., Ste. 300
Troy, MI 48098
Phone: 248-312-7953
Fax: 866-216-5992
E-mail: cashley@travelers.com

February 26, 2021

Re: Erhardt Construction Company

To Whom It May Concern:

We are pleased to share with you our experience as surety for the Erhardt Construction Company. We consider Erhardt Construction Company, one of our most outstanding and valued clients in whom we have the highest confidence. Through the years this company has, in our opinion, remained properly financed, well equipped and capably managed.

Travelers Casualty and Surety Company of America provides the Erhardt Construction Company, with a single project surety capacity of \$100,000,000 and an aggregate surety program of \$150,000,000.

Please note that the decision to issue performance and payment bonds is a matter between Erhardt Construction Company and Travelers, and will be subject to our standard underwriting at the time of the final bond request, which will include but not be limited to the acceptability of the contract documents, bond forms and financing. We assume no liability to third parties or to you if for any reason we do not execute said bonds.

Travelers Casualty and Surety Company of America carries an AM Best Rating of A++ and Financial Category size of XV. The Travelers Company is authorized to issue individual bonds in excess of \$2 billion by the Federal Government.

If you have any questions please do not hesitate to contact me as we are pleased to share with you our experience with this fine organization.

Best regards,



Christopher J. Ashley

Contact Information



Shaun Burket
Suburban Property, LLC | Developer & Lead Entity Representative
(616) 291-1768
shaun@suburbanlandscapesmi.com



Mike Corby, FAIA, LEED-AP
Integrated Architecture | President
(616) 574-0220
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Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: Sales Agreement 2725 Olthoff
Submitted By: Frank Peterson	Department: City Manager
Brief Summary: Staff is seeking approval to sell approximately 20 acres of property at 2725 Olthoff Drive.	
Detailed Summary. This site was originally procured from the Michigan State Land Bank, and previously housed the West Shoreline Correctional Facility. The property has a total of 64 acres, and approximately 34 are in the City of Muskegon. Staff seeks to sell approximately 20 acres of the property within the city limits for the purpose of redevelopment.	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s):	Fund(s) or Account(s): N/A
Recommended Motion: Approve the sales agreement and authorize the Mayor and Clerk to sign.	

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of January ___, 2022 (the “**Effective Date**”) by and between 2725 Olthoff LLC, a Michigan limited liability company, of 55 Campau Avenue NW, Suite 300, Grand Rapids, Michigan 49503 (“**Buyer**”) and the City of Muskegon, a Michigan municipal corporation, of 933 Terrace, Muskegon, Michigan 49440 (“**Seller**”).

R E C I T A L S

A. Seller owns that certain real property located in the City of Muskegon, County of Muskegon, State of Michigan, commonly known as 2725 Olthoff Drive, consisting of approximately 34.37 acres of vacant land in the Port City Industrial Park (the “**Parent Parcel**”) having permanent parcel number 61-24-696-000-0067-00.

B. Subject to the terms of this Agreement, Seller desires to sell and Buyer desires to purchase a portion of the Parent Parcel consisting of 20 or more acres, as depicted on Exhibit A attached hereto and to be more particularly described on Exhibit B to be attached hereto at a later date as described in this Agreement, together with all of Seller’s right, title and interest in and to all improvements, hereditaments, tenements, rights, leases, rents, issues, profits, easements appurtenant thereto, all collectively referred to herein as the “**Property**.”

C. Upon completion of the sale and purchase of the Property, Seller shall retain title to the residual portion of the Parent Parcel which is not being conveyed to Purchaser as part of the Property (the “**Retained Property**”). The Retained Property is described on Exhibit C to be attached hereto at a later date. Seller intends to obtain the issuance of all governmental approvals necessary to split the portion of the Property as shown as Exhibit A and described on Exhibit B out of the Parent Parcel in order to cause such portion of the Property to constitute a separate approximately 20 acre legal parcel substantially in the location and configuration shown on Exhibit A (the “**Land Division**”).

AGREEMENT

NOW, THEREFORE, taking into account the foregoing Recitals, and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. AGREEMENT TO PURCHASE AND SALE. Subject to the conditions and upon the terms of this Agreement, Seller hereby agrees to sell, convey and assign the Property to Buyer, and Buyer agrees to buy and accept the Property from Seller.

2. PURCHASE PRICE/DEPOSIT. The purchase price to be paid for the Property (the “**Purchase Price**”) at the Close of Escrow is One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per acre. The Purchase Price shall be deposited by Buyer into Escrow (as defined below) in immediately available funds on or before the Close of Escrow. Upon the full execution of this Agreement, Buyer shall deposit in escrow with the Title Company the sum of Five Thousand and 00/100 Dollars (\$5,000.00; the “**Earnest Money Deposit**”). The Earnest Money Deposit shall be applied to the Purchase Price at the Close of Escrow.

3. TITLE AND SURVEY.

(a) Title. As evidence of title to the Property, Buyer shall obtain at Seller’s cost and

expense, from First American Title Insurance Company, whose address is 4362 Cascade Road, SE, Suite 109, Grand Rapids, MI 49545 (the “**Title Company**”) a commitment (“**Title Commitment**”) to issue an owner’s title insurance policy insuring the Property in the amount of the Purchase Price, without the standard printed exceptions, which shall be in a form approved by the American Land Title Association (“**ALTA**”) and acceptable to Buyer; provided, however, that Buyer may request that the title insurance policy insure the Property in an amount greater than the Purchase Price (“**Additional Coverage**”), in which case Buyer shall pay for any additional cost of such Additional Coverage. Buyer shall notify Seller in writing on or before the expiration of the Due Diligence Period (defined below) if the Title Commitment discloses any exceptions not acceptable to Buyer or if the Survey (defined below) shows any deviation from apparent boundaries or represented acreage, violation of zoning ordinances, or building and use restrictions, flood hazard area, encroachment, or condition that poses a problem for Buyer’s lender, if any, or that, in Buyer’s judgment, could interfere with Buyer’s intended use of the Property (individually and collectively, a “**Defect**”). Seller may elect to remove each Defect at Seller’s expense on or before the Close of Escrow after Buyer’s notice of the Defect. In addition, Seller shall satisfy the requirements set forth in the Title Commitment on or before the Close of Escrow. If Seller fails or refuses to remove any Defect or satisfy any requirement on the Title Commitment, then Buyer may: (i) proceed to closing, waiving the Defect or requirement at issue; or (ii) terminate this Agreement by a written notice to Seller, the Earnest Money Deposit shall be returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement.

(b) **Survey.** Buyer’s receipt and approval, in its sole discretion, of a 2021 ALTA/NSPS land title survey of the Land which is certified to Buyer, Buyer’s lender, and the Title Company, insuring the transaction along with their underwriter, and Buyer’s assignee, if any, all at Buyer’s expense (“**Survey**”).

4. BUYER’S CONTINGENCIES AND OTHER CLOSING REQUIREMENTS. Buyer’s obligation to purchase the Property and the remainder of Buyer’s obligations under this Agreement shall be subject to its approval of each contingency set forth below (collectively, the “**Buyer Contingencies**”) on or before the date that is three hundred sixty-five (365) days after the Effective Date (“**Due Diligence Period**”). The Buyer Contingencies are for the sole benefit of Buyer. The satisfaction or waiver of each Buyer Contingency is a condition precedent to the Close of Escrow. This Agreement may be terminated upon written notice to Seller by Buyer on or before the expiration of the Due Diligence Period: (a) as a result of Buyer’s disapproval of any of the Buyer Contingencies, or (b) by reason of the failure of any condition precedent in favor of Buyer as set forth in this Agreement. If this Agreement is terminated for any reason other than a default under this Agreement solely on the part of Buyer, then Buyer shall be relieved of all obligations and liabilities under this Agreement and the Earnest Money Deposit shall be refunded to Buyer.

(a) **Inspections.** Buyer’s satisfaction, in its sole discretion, with the results of all inspections of the Property that Buyer desires, including, but not limited to, compliance of the Property with applicable laws, ordinances and regulations, the suitability of the Property for Buyer’s intended use, and the environmental condition of the Property, to be performed at Buyer’s discretion and expense. If the Property is a “facility” within the meaning of Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq (“**Part 201**”), Buyer may, at Buyer’s expense, prepare and, after closing, submit to the Michigan Department of Environment, Great Lakes and Energy (“**EGLE**”) a “baseline environmental assessment,” or “BEA,” pursuant to Section 26 of Part 201, MCL 324.20126. Buyer may also, at Buyer’s expense, prepare a due care plan to meet due care obligations, if any, at the Property imposed under MCL 324.20107a.

(b) **Land Division.** The conveyance of the Property shall be subject to and conditioned upon Seller, at its sole cost and expense, obtaining the issuance of all governmental approvals

necessary to split the portion of the Property identified on Exhibit A out of the Parent Parcel pursuant to 1967 PA, 288, MCL 560.101 *et seq.* (the “**Land Division Act**”), and in accordance with associated local governmental requirements. Seller shall use commercially reasonable efforts to cause the Land Division to be completed by the expiration of the Due Diligence Period, and Buyer shall reasonably cooperate, at no cost or expense to Buyer, with Seller in that regard. The size of the parcel created by the Land Division shall be sufficient to lawfully construct a 250,000-square-foot building in accordance with Buyer’s plans and specifications for the Project (defined below). If Seller is unable, despite its commercially reasonable efforts to do so, to effectuate the Land Division within the Due Diligence Period, then either party may elect to terminate this Agreement, by notice of such election to terminate delivered to the other party prior to the effectuation of the Land Division, and in the event of such termination, the Earnest Money Deposit shall be returned to Buyer and neither party shall have any further liability or obligation hereunder (other than the provisions of this Agreement that expressly survive Closing and/or termination of this Agreement). Once the Land Division is effectuated, the associated legal description of the Property shall be attached hereto as Exhibit B, the associated legal description of the Retained Property shall be attached hereto as Exhibit C, and the Buyer and Seller shall arrange to have the Title Company modify the Commitment to reflect the actual legal description of the Property and make the associated revisions to the Commitment. Any new title exceptions resulting therefrom shall be subject to Buyer’s approval, including, without limitation, the requirement of any additional title endorsements. Further, such legal description of the Property shall be utilized for purposes of Exhibit A to the Deed (defined in Section 5(c)). If Land Division Act approval is obtained, at Closing Seller shall convey at least one division right to Buyer at the closing.

(c) **Development.** Buyer intends to construct a life science research and office facility consisting initially of approximately 125,000 square feet, with an anticipated expansion of another 125,000 square feet (the “**Project**”). Buyer’s obligation to purchase the Property and the remainder of Buyer’s obligations under this Agreement shall be subject to Buyer’s satisfaction that the Property is suitable for the Project, including, but not limited to the condition of the surface and soil thereunder; the availability and condition of adjoining roadways, utilities, and sewers; a geotechnical analysis of the Property; Buyer’s satisfaction that all governing municipalities and all other government and regulatory agencies having jurisdiction over the Property or Buyer will permit and approve the Project (“**Permits and Approvals**”), including, but not limited to, the Permits and Approvals of an onsite incinerator;

(d) **Tax Abatement.** The Tax Abatement (defined below) shall have been obtained for the Property.

(e) **Financing/Appraisal.** Buyer’s receipt and approval of financing for the construction of the Project from sources and under terms and conditions acceptable to Buyer, in its sole discretion, and Buyer’s receipt and approval of an appraisal of the Property acceptable to Buyer, in its sole discretion.

(f) **Documents to be Provided by Seller.** Within five (5) business days of the Effective Date, to the extent in the possession or control of Seller, Seller shall deliver to Buyer full, complete, accurate, and legible copies of the following documentation, along with such other documents as Buyer may reasonably request, all to the extent within Seller’s possession or control (the “**Property Documents**”), for Buyer’s review and approval, in its sole discretion:

(i) all plans and specifications, soil, engineering, environmental reports and studies or architectural notices, studies, reports or plans, and all other reports concerning the Property which relate to the physical condition or operation of the Property (collectively, the “**Plans and Reports**”);

(ii) all zoning and land use applications, site plan, land use and governmental approvals, township resolutions, permits, licenses, entitlements and other governmental, utility service provider and other quasi-governmental authorizations, including any certificates of occupancy that Seller now holds in connection with the ownership, planning, development, construction, use, operation or maintenance of the Property and all amendments, modifications, supplements, general conditions and addenda thereto;

(iii) copies of any and all written notices received by Seller from any governmental or quasi-governmental authorities with respect to (A) violations or alleged violations of any License, law, code or regulation, including, without limitation, any health and sanitation, fire or building codes; (B) defects or other deficiencies in the Property, and (C) results of all inspections of the Property;

(iv) such other documents or items as Buyer may reasonably request in connection with its due diligence investigation of the Property or the operation thereof.

(g) **Third Party Consents.** Buyer shall have received all third-party consents necessary to effectuate the transfer of the Property to Buyer pursuant to the terms hereof.

Buyer's obligation to purchase the Property and the remainder of Buyer's obligations under this Agreement shall additionally be subject to its approval of each contingency set forth below on or before the Close of Escrow:

(i) **Date Down of Representations; No Breach of Covenants.** All of the representations and warranties of Seller pursuant to Section 10 below shall be true and correct in all material respects as of the Close of Escrow and, prior to the Close of Escrow, there shall be no material breach of Seller's covenants or obligations under this Agreement.

(ii) **Proforma.** The Title Company's commitment to issue a marked-up title commitment or pro forma owner's policy to be issued at the Close of Escrow, along with title insurance policy endorsements required by Buyer and to be obtained at Buyer's expense.

5. ESCROW.

(a) **Escrow Holder; Escrow Instructions.** First American Title Insurance Company, Attn: Gary Wadsworth (the "**Escrow Holder**") shall establish an escrow for the purchase and sale of the Property (the "**Escrow**"). This Agreement, together with such further written instructions, if any, as both parties jointly provide to Escrow Holder, shall constitute the escrow instructions to the Escrow Holder.

(b) **Opening and Close of Escrow.** The Escrow shall be deemed open as of the Effective Date and shall close (the "**Close of Escrow**") effective on the transfer of the Property which shall be deemed to have occurred as of 12:01 a.m. local time on the date of the Close of Escrow. The Close of Escrow shall occur on the date that is thirty (30) days after the expiration of the Due Diligence Period; provided, however, that (i) the Close of Escrow shall take place on an earlier date as shall be specified by Buyer on at least one week's notice to Seller after the completion of the Land Division; or (ii) the Close of Escrow may be extended by Buyer upon notice to Seller for thirty (30) days in order to accommodate Buyer's completion of its inspections, including its inspection of the environmental condition of the Property. The Close of Escrow shall be held at the Title Company, unless otherwise agreed in writing by the parties.

(c) **Seller Deposits Into Escrow.** As a condition precedent to the Close of Escrow in favor of Buyer, Seller shall deliver or cause to be delivered the items set forth below to Escrow Holder to permit the closing of the transaction contemplated hereby:

- (i) duly executed and acknowledged warranty deed (the “**Deed**”);
- (ii) duly executed non-foreign affidavit;
- (iii) payoff letters from the holders or claimants of, or with respect to, any encumbrance or monetary lien affecting the Property;
- (iv) any and all transfer declarations or disclosure documents, duly executed by the appropriate parties, required in connection with the recordation of the Deed by any state, city, or county agency having jurisdiction over the Property or the transactions contemplated hereby;
- (v) a duly executed closing statement setting forth the Purchase Price and closing adjustments (“**Closing Statement**”);
- (vi) an assignment to Buyer of (i) all of the right, title and interest of Seller in, to and under each service contract, utility contract and similar contract or commitment (if assignable), including but not limited to the Contracts, affecting all or any portion of the Property, which Buyer determines, in its sole discretion, to retain; and (ii) all governmental licenses, permits and approvals (if assignable), affecting all or any portion of the Property, which Buyer determines to retain, together with originals of all items assigned;
- (vii) any other documents reasonably required by the Title Company or Escrow Holder to consummate this transaction.

(d) **Buyer Deposits Into Escrow.** As a condition precedent to the Close of Escrow in favor of Seller, Buyer shall deliver or cause to be delivered in a timely manner to permit the closing of the transaction contemplated hereby by the Close of Escrow the following:

- (i) to Escrow Holder a sum equal to the Purchase Price less any credits against the Purchase Price and other adjustments provided for herein, plus any other sums required for costs to be paid by Buyer pursuant to the terms of this Agreement;
- (ii) to Escrow Holder a duly executed counterpart of the Closing Statement;
- (iii) to Escrow Holder any executed or other documents reasonably required by the Title Company or Escrow Holder to consummate this transaction;

(e) **Authorization to Close Escrow.** Provided that Escrow Holder has not received written notice from Buyer of the failure of any conditions precedent or of the termination of the Escrow, once Buyer and Seller have deposited into the Escrow or delivered to the other party (and provided Escrow Holder with notice of the same), as applicable, the items required by this Agreement and the Title Company is irrevocably and unconditionally committed to issuing the Title Policy, Escrow Holder shall:

- (i) Cause the Deed to be recorded in the land records or official records, as applicable, of the county in which the Property is located (the “**County**”), and cause a conformed copy of the Deed to be mailed to Buyer after the same has been recorded.

(ii) Deliver to Seller the Purchase Price, as adjusted under this Agreement.

(iii) Cause the Title Policy to be issued to Buyer by the Title Company, without the standard printed exceptions (with delivery of the original of the Title Policy to occur as soon as possible, but in all cases, within thirty (30) days of the Close of Escrow).

(f) **Possession.** At the Close of Escrow, Seller shall deliver to Buyer actual physical possession of the Property, free of all tenants or other occupants.

6. CLOSING COSTS.

(a) **Seller Costs.** Seller shall pay (i) any documentary transfer tax, revenue tax or excise tax (and any surtax thereon) due in connection with the consummation of this transaction; (ii) Seller's legal, accounting and other professional fees and expenses, and the cost of all certificates, instruments and documents required to be delivered, or to cause to be delivered, by Seller hereunder; (iii) fifty percent (50%) of all escrow fees of the Escrow Holder; and (iv) any and all costs, expenses or fees associated with Seller's paying off of any loans or liens on the Property.

(b) **Buyer Costs.** Buyer shall pay (i) all costs incurred by Buyer in connection with its investigation of the Property, including the cost of any appraisal, ALTA/NSPS survey, site inspections or environmental audits; (ii) Buyer's legal, accounting, and other professional fees and expenses and the cost of all certificates, instruments, and documents required to be delivered by Buyer hereunder; (iii) fifty percent (50%) of all escrow fees of the Escrow Holder; and (iv) the fees for recording the Deed.

(c) **Cost of the Title Policy.** Seller shall pay the cost of the premium for the Title Policy in the amount of the Purchase Price, excluding any special endorsements requested by Buyer which shall be paid by the Buyer. Buyer shall pay the cost of the Additional Coverage.

(d) **Other Costs.** Any other costs of the Escrow or of closing pertaining to this transaction not otherwise expressly allocated among Buyer and Seller under this Agreement shall be apportioned in the manner customary in the county where the Property is located.

(e) **Cancellation of Escrow.** Notwithstanding the provisions of this Section 6, if the Escrow fails to close for any reason (other than the breach of this Agreement by one or both of the parties), the costs incurred through the Escrow shall be borne equally by Buyer and Seller. Otherwise, the party who first breached this Agreement shall bear all the costs of the Escrow.

7. **PRORATIONS AND ADJUSTMENTS.** Seller shall pay all property taxes (real or personal) and special assessments in respect of the Property that are a lien or due and payable or both as of the Close of Escrow; Buyer shall be responsible for all other property taxes.

8. TITLE.

(a) **Conveyance.** Title to the fee simple interest in the Property shall be conveyed to Buyer by the Deed at the Close of Escrow.

(b) **Title Policy.** The title to be conveyed to Buyer shall be insured by an Extended ALTA Owner's Policy of Title Insurance (the "**Title Policy**") with aggregate liability in the amount of the Purchase Price (or greater amount as may be requested by Buyer under Section 3(a) above), dated the date the Deed is recorded, issued by the Title Company, insuring that title to the fee interest in the Property is vested in Buyer, subject only to the exceptions acceptable to Buyer. The Title Policy shall include the

endorsements required by Buyer, at Buyer's expense, and shall exclude any stipulation for arbitration. Seller shall execute an affidavit and/or certified resolutions on the Title Company's standard form so that the Title Company can delete or modify the standard printed exceptions.

9. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer hereby represents and warrants to Seller that the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Close of Escrow:

(a) Organization. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Michigan.

(b) Authority; Enforceability; Conflict. This Agreement and all the documents to be executed and delivered by Buyer to Seller or Escrow Holder pursuant to the terms of this Agreement (i) have been or will be duly authorized, executed and delivered by Buyer; (ii) are or will be legal and binding obligations of Buyer as of the date of their respective executions; (iii) are or will be enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally); and (iv) do not, and will not at the Close of Escrow, violate any provision of any agreement to which Buyer is a party, any of Buyer's organizational documents or any existing obligation of or restriction on Buyer under any order, judgment or decree of any state or federal court or governmental authority binding on Buyer.

(c) Project Investment. Provided that Buyer receives all necessary Permits and Approvals for the construction and operation of the Project, Buyer shall use commercially reasonable efforts to construct the Project, including, but not limited to, making an initial investment in the construction of the Project of at least Forty Million Dollars (\$40,000,000) within Three Hundred Sixty-Five (365) days after the later of (i) the Close of Escrow or (ii) the date that Buyer receives all necessary Permits and Approvals for the construction and operation of the Project and the Tax Abatement. If the Project is completed, Buyer shall initially employ at least fifty (50) persons at the Project within One Hundred Twenty (120) days following completion of construction of the Project and the commencement of operations at the Project.

10. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Close of Escrow:

(a) Authority; Enforceability; Conflict. This Agreement and all the documents and items to be executed and delivered by Seller pursuant to the terms of this Agreement (i) have been or will be duly authorized, executed and delivered by Seller; (ii) are or will be legal and binding obligations of Seller as of the date of their respective executions; (iii) are or will be enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally); (iv) do not, and will not as of the Close of Escrow, violate any provision of any agreement to which such Seller is a party, any of such Seller's governing documents or any existing obligation of or restriction on Seller under any order, judgment or decree of any state or federal court or governmental authority binding on Seller; and (v) will be sufficient to convey title (if they purport to do so).

(b) Notices. Seller has not received any notice of (i) any violation of any applicable laws, moratoria, initiative, referenda, ordinances, rules, regulations, codes, standards, judgments, orders, directives, injunctions, writs or decrees promulgated by any federal, state or local governmental body or by

any quasi-governmental body having authority over Seller or the Property or the operations thereof (collectively, “**Laws**”).

(c) **Compliance.** The use, operation and sale of the Property is in all material respects in compliance with all applicable Laws, including all applicable zoning building codes, environmental, zoning, subdivision, and land use Laws. Buyer’s proposed use of the Property for a life science research and office facility containing an onsite incinerator shall be permitted as of right under all applicable zoning ordinances.

(d) **Accuracy of Information.** To the best of Seller’s knowledge, the Property Documents delivered by Seller are, to the extent applicable, true in all material respects, and there are no other written material agreements or understandings to which Seller or any of its affiliates are a party or are bound relating to the Property or their operation or use other than as delivered or disclosed in writing to Buyer or disclosed on the Title Commitment.

(e) **Litigation; Condemnation.** There are no (i) actions, suits or proceedings pending or, to Seller’s knowledge, threatened before or by any governmental authority or other person, against or affecting Seller, any of its affiliates or the Property or (ii) to Seller’s knowledge, proposed or threatened eminent domain or similar proceedings which would affect any Land or Improvements in any manner whatsoever.

(f) **Tax Abatement.** The Project is located in a Commercial Redevelopment District and qualifies for a “new facility” property tax abatement of 12 years under the Commercial Redevelopment Act, PA 255 of 1978, as amended (the “**Tax Abatement**”). Seller shall obtain the Tax Abatement for the Property on or prior to the Close of Escrow, provided that Buyer reasonably assists and cooperates with Seller’s efforts to obtain the Tax Abatement.

(g) **Title.** Seller is the sole owner of the Property and has good, valid and marketable title to the Property free and clear of all liens, encumbrances, rights, reservations, easements and other exceptions other than those of record and/or those which are to be discharged at closing.

(h) **CC&RS.** Seller has received no notice or complaint with respect to any violation of any covenant, condition or restriction applicable to the Property.

(i) **Hazardous Materials.**

(i) To the best of Seller’s knowledge, (A) Seller does not now use the Property or permit the Property to be used in a manner which violates any federal, state or local law, regulation or ordinance or any judicial decisions, rules, regulations or publications promulgated thereunder regarding the environment or materials which are or could be hazardous to persons or property (collectively “**Environmental Enactments**”), and Seller has never done so in the past; (B) there have been no violations of an Environmental Enactment on the Property by any other prior owner of the Property, (C) there is no discharge, seepage or release of Hazardous Materials (as hereinafter defined) onto the Property from adjoining property; and (D) neither Seller nor any prior owner has used the Property or allowed the Property to be used in a way which would require notice or reporting to a governmental agency of such use under any Environmental Enactment. Without limiting the foregoing, to the best of Seller’s knowledge, no asbestos, polychlorinated biphenyls, radon, urea or formaldehyde are contained in or stored on or under the Property, there are no Hazardous Materials on or under the Property in violation of any Environmental Enactments, and there are no storage tanks containing or previously containing Hazardous Materials located in or under the Property.

(ii) As used herein, “**Hazardous Materials**” shall mean (i) any waste, material or substance (whether in the form of a solid, liquid or and gas), which is deemed to be a pollutant or a contaminant or hazardous, toxic, ignitable, reactive, corrosive, harmful or injurious, or which presents a risk to public health or the environment, or which is or may become regulated by or under any Environmental Enactments; (ii) petroleum, including crude oil or any fraction thereof, and petroleum-containing products; (iii) asbestos containing material; (iv) lead-based paint; (v) polychlorinated biphenyls; (vi) radioactive material; (vii) urea formaldehyde; and (viii) radon gas. As used herein, “a violation of an Environmental Enactment” or words of similar import shall mean the existence, use, storage, discharge, treatment, release, transportation or disposition of, whether temporarily or permanently, any Hazardous Materials at, on or under the Property other than in compliance with the requirements of all applicable Environmental Enactments.

No representation or warranty made by Seller in this Agreement shall merge into any instrument of conveyance delivered at the Close of Escrow but shall survive the Close of Escrow.

11. BUYER AND SELLER COVENANTS.

(a) **Utilities.** Within Twenty-Six (26) weeks after the Close of Escrow, Seller shall, at Seller’s sole cost and expense, cause all electric, gas, data and telecommunications, water, sanitary sewer and storm sewer utilities to be extended along Olthoff Drive and stubbed to the Property (“**Seller Utility Work**”). Seller shall be responsible for obtaining all permits and approvals necessary for the Seller Utility Work.

(b) **Approvals.** Seller shall reasonably and cooperatively assist Buyer in Buyer’s efforts to obtain the Permits and Approvals, including, without limitation, any tax abatements, grants and/or other incentives available from any state, county and/or local governmental authorities, and any approvals relative to the environmental condition of the Property and Buyer’s proposed incinerator, and Seller agrees to execute any necessary applications as a part of Buyer’s inspections and Seller agrees not to interfere with or object to any such submissions by Buyer.

(c) **Tax Exemption.** At Buyer’s request, Seller will request an Eligible Manufacturing Personal Property Tax Exemption from the State of Michigan for all eligible personal property owned by Buyer and located on the Property.

Seller’s obligations under this Section 11 shall survive the Close of Escrow.

12. INDEMNIFICATION.

(a) **Indemnification By Seller.** Seller hereby agrees to indemnify, defend, and hold harmless Buyer (including the Buyer’s managers, members, employees, advisors, accountants, attorneys, partners, and any other person having a direct or indirect ownership interest in Buyer) from and against any losses, damages, costs and expenses (including attorneys’ fees) resulting from any material inaccuracy or material breach of any representation or warranty of Seller.

(b) **Indemnification by Buyer.** Buyer hereby agrees to indemnify, defend, and hold harmless Seller (including the Seller’s officers, directors, employees, advisors, accountants, attorneys, partners, shareholders and any other person having a direct or indirect ownership interest in Seller) from and against any losses, damages, costs and expenses (including attorneys’ fees) resulting from any material inaccuracy or material breach of any representation or warranty of Buyer.

13. BROKER'S COMMISSION. Buyer and Seller agree that a brokerage fee shall be paid by Seller to Core Realty in connection with the purchase and sale of the Property (the "**Brokerage Fee**"). Buyer and Seller each agrees to indemnify, defend and hold harmless the other from and against any and all losses, claims, damages, costs or expenses (including attorneys' fees) which the other may incur as a result of any claim made by any person to a right to a sales or brokerage commission or finder's fee other than the Brokerage Fee in connection with this transaction to the extent such claim is based, or purportedly based, on the acts or omissions of Seller or Buyer, as the case may be.

14. LIKE KIND EXCHANGE. Seller and Buyer acknowledge that one or both of them may elect to include the Property in a tax deferred exchange transaction pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (a "**1031 Exchange**"). Each party (the "**Cooperating Party**") agrees, at the request of the other party (the "**Requesting Party**"), to cooperate with the Requesting Party and third parties in achieving a 1031 Exchange, including consenting to the assignment of this Agreement in connection with a 1031 Exchange. The Requesting Party shall not be relieved from any obligations hereunder due to a 1031 Exchange and shall indemnify and hold the Cooperating Party harmless from any additional closing expenses which may result from participation in a 1031 Exchange. The Cooperating Party shall not be required to hold title to any property (other than the Property) in connection with a 1031 Exchange, nor shall the Requesting Party be entitled to delay the Close of Escrow in order to accommodate a 1031 Exchange.

15. NOTICES. All notices, requests and demands to be made hereunder to the parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) personal service; (b) certified or registered mail, postage prepaid, return receipt requested; or (c) nationally recognized courier or delivery service. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent in accordance with this Section shall be deemed effective upon the date personally delivered to the recipient or on the date of mailing, postage prepaid, by registered or certified mail, or by nationally recognized courier or delivery service. Refusal to accept delivery of any notice, request or demand shall be deemed to be delivery thereof. Notice to any one co-party shall be deemed notice to all co-parties.

To Seller:

To Buyer:

2725 Olthoff LLC
Attn: Shane Woods
1210 East Pontaluna Road
Norton Shores, Michigan 49456

with a copy to:

Rhoades McKee PC
55 Campau Avenue NW, Suite 300
Grand Rapids, Michigan 49503
Attn: Timothy R. Dudley

To Escrow Holder and/or Title Agent:

First American Title Insurance Company
4362 Cascade Road, SE, Suite 109
Grand Rapids, MI 49546
Attn: Gary Wadsworth
Email: gwadsworth@firstam.com

16. MISCELLANEOUS PROVISIONS.

(a) **Incorporation of Prior Agreements.** This Agreement contains the entire understanding of Buyer and Seller with respect to the subject matter hereof, and no prior or contemporaneous written or oral agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing, expressly stating that such agreement is an amendment of this Agreement, signed by the parties to this Agreement or their respective successors in interest.

(b) **Buyer's Right to Assign.** Buyer shall have the right to assign its rights under this Agreement to any affiliate of Buyer.

(c) **Attorneys' Fees.** In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action will be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein.

(d) **Time is of the Essence.** Time is of the essence for this Agreement.

(e) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns.

(f) **No Third Party Beneficiaries.** This Agreement is made and entered into solely for the protection and benefit of the parties and their successors and permitted assigns. No other person shall have any right of action hereunder.

(g) **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Michigan without giving effect to any "conflict of law" rules of such state.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. Executed copies hereof may be delivered by email or other electronic means and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

(i) **Interpretation; Construction.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly against the party that

drafted such language. Section and paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

(j) Exhibits; Schedules; Recitals Verified. All Exhibits attached hereto are incorporated herein by reference. The Recitals to this Agreement are hereby stated to be true and correct and are incorporated herein by this reference.

(k) Waiver by a Party. The waiver of any contingency, representation, warranty, covenant, or other matter or provision hereof may only be made in writing (including electronic mail) by the party benefited by the same.

(l) Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed and/or delivered hereunder, Buyer and Seller agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments and assurances as may be reasonably required to consummate the transactions contemplated hereby.

(m) Default; Injunctive and Equitable Relief. If Buyer defaults on its obligation to close under this Agreement, then provided that Seller is not in default under this Agreement, Seller shall as its sole remedy be entitled to terminate this Agreement and retain the full amount of the Earnest Money Deposit, not as a penalty, but in liquidation of all damages sustained by Seller because of Buyer's default (the parties recognizing the impossibility of precise ascertainment of the amount of damages suffered by Seller), and Seller shall have no other remedy against Buyer for such default either at law or in equity. Seller and Buyer hereby agree that the Property is of a special and unique character which gives it a peculiar value, and that Buyer cannot reasonably or adequately be compensated in damages in an action at law if Seller breaches its obligations under the Agreement. Therefore, Buyer shall be entitled to injunctive and other equitable relief (including, without limitation, the right to specifically enforce Seller's obligation to sell the Property) in the event of such breach, in addition to any other rights or remedies which may be available to Buyer.

(n) Business Days. As used in this Agreement, a "business day" shall mean a day other than Saturday, Sunday or any day on which banking institutions in Muskegon County, Michigan, are authorized by law or other governmental action to close. All other references to "days" or "calendar days" in this Agreement shall refer to calendar days. If any period expires or delivery date falls on a date that is not a business day under this Agreement, such period shall be deemed to expire and such delivery date shall be deemed to fall on the immediately succeeding business day.

(o) Survival. All covenants, representations or indemnities set forth in this Agreement shall survive the Close of Escrow or any termination of this Agreement.

(p) Confidentiality. Neither Buyer, Seller, nor any broker employed or engaged by any of them shall issue (or cause to be issued) any press releases concerning the subject matter hereof, structure of the transactions or the status of negotiations conducted hereunder except as may be jointly agreed to by Seller and Buyer or as any of them may reasonably consider necessary in order to satisfy the requirements of applicable law; provided, however, that notwithstanding anything herein to the contrary, Buyer may, free from the restrictions of this paragraph, report on the transaction completed by this Agreement in connection with its due diligence investigations and with any meetings or conference calls with, or disclosures made to, Buyer's consultants, contractors, investors, principals, employees, agents, attorneys, accountants and other advisors.

[Signatures on following pages]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day and year first above written.

“BUYER”

2725 OLTHOFF LLC, a Michigan limited liability company

By: _____

Name: _____

Title: _____

“SELLER”

CITY OF MUSKEGON,
a Michigan municipal corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

[insert]

EXHIBIT B

[insert]

EXHIBIT C

[insert]

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11 th , 2022	Title: Pere Marquette Parking Improvements
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking approval to enter into an Engineering Services Agreement (ESA) with DLZ for completion of the Parking Revisions at Pere Marquette Park.	
Detailed Summary: This item is schedule for discussion at the Work Session meeting on December 13 th , 2021. Pending a supportive outcome and direction from that meeting staff is requesting to enter into the attached ESA with DLZ, Inc. to complete the design engineering portion of the proposed work. This topic was discussed at the work session meeting on January 10, 2022 with the recommended motion set to reflect the outcome of that meeting.	
Amount Requested: \$53,150.00 or \$71,265.00	Amount Budgeted: \$0 (Will need addressed at Reforecast)
Fund(s) or Account(s): 101-92016-5300	Fund(s) or Account(s): 101-92016-5300
Recommended Motion: Move to authorize the DPW Director to negotiate and sign a modified Engineering Services Agreement with DLZ Inc. for pedestrian and parking improvements at Pere Marquette Park. Modifications to the presented agreement will include; selection of the Option #2 design for the one-way single angle parking, removal of the surveying and design engineering for the trail north of the Bathhouse, revising the proposed trail width to 16 FT, and including design considerations for use of the northern most row of parking in the ovals lot as flexible space for potential future use by chalets or other concession operations.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



INNOVATIVE IDEAS
EXCEPTIONAL DESIGN
UNMATCHED CLIENT SERVICE

December 2, 2021

Mr. Leo Evans, Director
City of Muskegon
1350 Keating Avenue
Muskegon, Michigan 49442

Re: Proposal for Professional Engineering Services for Beach Street Parking and Pedestrian Facilities Improvements No. 2

Dear Mr. Evans:

DLZ Michigan, Inc. (DLZ) is pleased to submit this proposal for professional engineering and surveying services to the City of Muskegon (CITY) for proposed parking and pedestrian facility improvements along Beach Street near Pere Marquette Park. (See Attached – Location Map)

BACKGROUND

DLZ's understanding of the project is based on discussions with CITY staff and current work in the area. The scope of the project consists of parking and pedestrian improvements along Beach Street starting near the south parking lot (MACkite building) and extending north to the Ovals intersection with pedestrian improvements continuing along the west leg of Beach Street north in front of the Deck and tie into existing sidewalks at Margaret Elliot Park. The proposed pedestrian improvements would consist of a 20 feet wide concrete walkway with a possible split around the City's bathhouse and a short extension westerly of the bathhouse. The short extension westerly of the bathhouse would replace a temporary walkway that is placed each spring by CITY staff. Additional parking improvements are being considered within the center of the Ovals consisting of a redesigned parking lot including new pavement, additional parking spaces, and revised parking lot layout. No new entrance locations into the center parking lot are anticipated. Parking and pedestrian improvements for the area south of the Ovals to the south parking lot (MACkite building) were developed under a previous contract by DLZ. It is anticipated construction would commence in fall of 2022.

The following agreement between DLZ and the CITY is separate and distinct from any other agreement between DLZ and the CITY.

SCOPE OF SERVICES

The parking and pedestrian facility improvements will generally consist of construction of angled parking on both sides of a one-way south bound drive from the south Ovals to the south parking lot, reconstruction of the parking lot in the center of the Ovals, and a non-motorized pedestrian pathway running parallel to Beach Street from the south parking lot (MACkite building) to the Ovals and continuing north along the west leg of Beach Street and continuing around the Ovals to tie into existing sidewalks at the Margaret Elliot Park. The following are two options for design engineering services for consideration:

DESIGN ENGINEERING SERVICES – Option No. 1

(Use previously developed Beach Street Parking and Pedestrian Facility Improvement drawings, DLZ PN:2045721900, Sheets 1-12, 3/10/2021)

- DLZ will meet with CITY staff to verify the scope of the project and to gather input on the proposed parking and pedestrian facility improvements. The sizing and angle of the proposed parking spaces will adhere to CITY standards.
- DLZ will perform a topographic survey to collect data along the proposed project corridor. Plans will include all physical features within the proposed project area as generally required for the construction of parking lots and pedestrian facilities. The topographical survey would include the roadway of the west leg of the Ovals and the center parking lot. For the purpose of this proposal, topographical survey information from a current CITY project (Contract No. 1 Beach Street Roadway and Water Main Improvements) will be utilized as much as possible to save time and money.
- DLZ will prepare the preliminary plans of the major components of the proposed parking and pedestrian facility improvements. Once prepared, DLZ will meet with CITY staff to review the design as part of the preliminary design phase.
- DLZ will, upon review with CITY staff, prepare final plans depicting the physical features and the proposed parking improvements to industry standards. For purposes of this proposal, the preparation of easements is not anticipated.
- DLZ will identify and develop permit application support documents for the CITY's use that may be required for the construction of the project including Critical Dunes permit, Muskegon County Soil Erosion and Sedimentation Control (SESC) as may be required. Application and permit fees will be the responsibility of the CITY.
- DLZ will, based on comments received in review meetings and task items described above, complete the plans and specifications, and prepare a set of bidding documents for the purposes of a public bid opening.

DESIGN ENGINEERING SERVICES – Option No. 2

- All items listed under Option No. 1
- DLZ will, based on comments received from the CITY, revise the construction drawings for previously proposed parking and pedestrian improvements from the south Ovals to the south parking lot (DLZ PN:2045721900, Sheets 1-12, 3/10/2021).

RESPONSIBILITIES OF THE CITY

- The CITY will make available any existing studies, reports, record drawings, billing data, address maps, zoning maps, future service areas, and system information necessary to complete the project.
 - The CITY will attend all necessary meetings and will assist with the coordination of design efforts.
 - The CITY will designate an individual as a contact person to facilitate the transfer of information and to be the liaison for the project.
-

SPECIAL SERVICES

The following services, when requested and authorized by the CITY, will be provided by DLZ:

- Services due to changes in the scope and complexity of the project or its design, including, but not limited to changes in size, alignment, or character of construction. Services due to unforeseen underground conditions such as, but not limited to, the presence of petroleum products in the soil or groundwater of the site as may be encountered by excavation or dewatering activities.
- Services related to dewatering activities and laboratory services that may be required in connection with the Project.

The following services are not considered part of this proposal:

- Environmental Assessments;
- Permit Application fees;
- Procurement of Easements;
- Geotechnical Reports; and
- Wetland Determinations.

TERMS AND CONDITIONS

The Standard Terms and Conditions, as set forth as attached Exhibit A, are incorporated here into and made a part of this Work Order Proposal. The Client referred to in the Standard Terms and Conditions means the City of Muskegon.

PROFESSIONAL FEE

For services described in the, **SCOPE OF SERVICES - DESIGN ENGINEERING SERVICES, Option No. 1**, DLZ proposes to charge, and the CITY agrees to pay in accordance with the attached Exhibit B Rate Schedule, a not to exceed fee of **\$53,150.00** without prior approval of the CITY. Invoices will be rendered monthly based on the actual hours expended times the rate shown on Exhibit B for the classification of the individual working on the project.

For services described in the, **SCOPE OF SERVICES - DESIGN ENGINEERING SERVICES, Option No. 2**, DLZ proposes to charge, and the CITY agrees to pay in accordance with the attached Exhibit B Rate Schedule, a not to exceed fee of **\$71,265.00** without prior approval of the CITY. Invoices will be rendered monthly based on the actual hours expended times the rate shown on Exhibit B for the classification of the individual working on the project.

For services described in **SPECIAL SERVICES**, DLZ proposes to charge, and the CITY agrees to pay in accordance with the attached Exhibit B Rate Schedule on the actual hours expended times the rate shown on Exhibit B for the classification of the individual working on the service.

DLZ and its employees comply with all coronavirus protocols and guidelines, including all updates and revisions thereto, issued by the States in which DLZ provides services and the U.S. Centers for Disease Control and Prevention (CDC). DLZ time and expense for additional safety protocols or training required by the City of Muskegon or its representatives are not included in this proposal and will be invoiced at DLZ's standard rates.



INNOVATIVE IDEAS
EXCEPTIONAL DESIGN
UNMATCHED CLIENT SERVICE

City of Muskegon
Beach Street Parking and Pedestrian Improvements No. 2
December 2, 2021
Page 4 of 4

Neither Party will be responsible or liable for delays caused by persons, events, or circumstances for which the Party, its employees, subcontractors, and subconsultants are not responsible including, but not limited to, Acts of God including delays attributable to the coronavirus pandemic.

If you approve and accept this Proposal, please sign, date and return one copy of this Proposal for our records. Should you prefer to issue a Purchase Order as your official acceptance, we request that you reference this Proposal in your paperwork.

DLZ appreciates the opportunity to submit this Letter Agreement for professional services. This offer will remain open for acceptance for 60 days. If for any reason you should have questions, please do not hesitate to call Randy Parrett at (231) 780-3100.

Sincerely,
DLZ MICHIGAN, INC.

Terry Biederman, P.E.
Vice President

Attachments:
Location Map
Exhibit A: Standard Terms and Conditions
Exhibit B: Rate Schedule

Approved and Accepted

Signature _____

Printed Name _____

Title _____

Date _____



LOCATION MAP

SCALE: VERT. No Scale
HORZ.



INNOVATIVE IDEAS
EXCEPTIONAL DESIGN
UNMATCHED CLIENT SERVICE

City of Muskegon
1350 Keating Avenue
Muskegon, Michigan 48442
231-714-4100

DESIGN:
DLZ

CHECKED:
DLZ

DRAWN:
DLZ

JOB NO. 2147-0037-21

DATE ISSUED
11/21/2021

SHEET NO.

1

EXHIBIT A
DLZ'S STANDARD TERMS AND CONDITIONS

1. INVOICES AND PAYMENT: Unless the parties have agreed otherwise, DLZ will submit monthly invoices to CLIENT for services performed in the prior month. Except to the extent CLIENT disputes in good faith all or a portion of a DLZ invoice, CLIENT will pay DLZ the invoiced amount within thirty (30) days from the date of the invoice; and, in default of such payment, agrees to pay all cost of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. Invoiced amounts not in dispute will accrue interest at eight percent (8%) per annum after they have been outstanding for over thirty (30) days. If an invoiced amount not in dispute remains unpaid sixty (60) days after the date of the invoice, DLZ may, upon giving seven (7) days written notice of its intent to do so, suspend all project services until all unpaid invoiced amounts not in dispute are paid in full. If an invoice remains unpaid ninety (90) days after the date of the invoice, DLZ may, upon giving seven (7) days written notice of its intent to do so, declare CLIENT to be in breach of this agreement.

2. CONSTRUCTION SERVICES: If DLZ's scope of services includes providing professional services during the project's construction phase, DLZ will not have control over or be responsible for contractor means, methods, techniques, sequences, procedures, or schedule, or the contractor's failure to comply with the construction contract documents or applicable laws, ordinances, rules or regulations. If DLZ provides construction inspection or observation services, DLZ will report to CLIENT all contractor deviations from the construction contract documents that come to DLZ's attention. However, such services are solely intended to enable DLZ to maintain familiarity with, and keep CLIENT informed of, the general progress and quality of the contractor's work, and not to require DLZ to perform exhaustive inspections of contractor work for its compliance with the construction contract documents, which shall remain solely contractor's responsibility.

3. CHANGES IN REQUIREMENTS: In the event additional services are required due to a change, after the date of this agreement, in CLIENT's requirements, or in the applicable law, standards, or governmental requirements or policies, DLZ will be entitled to additional compensation for such additional services.

4. SURVEY STAKING: If DLZ's scope of services includes survey layout, DLZ will not be responsible for subsequent disturbances of its layout except to the extent caused by DLZ or persons for whom it is responsible.

5. MISCELLANEOUS EXPENSES: Except to the extent otherwise provided in this agreement, CLIENT is responsible for all third-party fees and charges including, without limitation, fees and charges for inspections, zoning or annexation applications, assessments, soils engineering, soils testing, aerial topography, permits, rights-of-entry, bond premiums, title company charges, blueprint and reproduction costs, and all other third-party fees and charges.

6. CHANGE OF SCOPE: DLZ's scope of services in this agreement is based on facts known at the time of execution of this agreement, including, if applicable, information supplied by CLIENT. DLZ will promptly notify CLIENT in writing of any perceived changes to its scope of services required by new information or by persons or circumstances beyond DLZ's control, and the parties shall negotiate modifications to this agreement before DLZ begins performance of the revised scope.

7. SAFETY: DLZ will take reasonable steps to protect the safety of its employees, and to perform its services in a safe manner. DLZ is not responsible for project safety other than with regard to its own services.

8. REUSE OF PROJECT DELIVERABLES: CLIENT's use of any project documents or DLZ deliverables, including electronic media, for any purpose other than that for which such documents or deliverables were originally prepared, or alternation of such documents or deliverables without written verification or adaption by DLZ for the specific purpose intended, will be at CLIENT's sole risk.

9. OPINIONS OF CONSTRUCTION COST: Any opinion of construction costs prepared by DLZ is supplied for the general guidance of the CLIENT only. Since DLZ has no control over competitive bidding or market conditions, DLZ cannot guarantee the accuracy of such opinions as compared to contractor bids or actual cost to CLIENT.

10. INSURANCE: During the performance of its services and for two years thereafter, DLZ will maintain the following minimum insurance coverage: General Liability- \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$1,000,000 personal/advertising injury aggregate; Automobile Liability- \$1,000,000 combined single limit; Workers Compensation and Employers Liability- in conformance with statutory requirements, and \$1,000,000 employers liability; and Professional Liability- \$2,000,000 per claim and in the aggregate. Certificates evidencing such coverage will be provided to CLIENT upon request. If DLZ is providing construction phase services, CLIENT agrees to require its contractor to include DLZ as an additional insured on the contractor's General Liability and Automobile Liability insurance policies, and DLZ's above-listed coverage will be excess over the contractor's coverage, which will be primary.

11. INDEMNITY: To the fullest extent permitted by law, each of the parties agrees to indemnify and save harmless the other party from and against all liability, damages, and expenses, including reasonable attorney's fees, sustained by the other party by reason of injury or death to persons or damage to tangible property, to the proportionate extent caused by the negligent acts or omissions of the indemnifying party or its employees.

12. CONSEQUENTIAL DAMAGES: Neither party will be liable to the other for consequential, special, incidental, indirect, liquidated, or punitive damages.

13. LIABILITY: No employee of DLZ or of its parent, subsidiary, or affiliated companies will be personally liable to CLIENT. DLZ's total liability to CLIENT, and any coverage of CLIENT as an additional insured under any of DLZ's insurance policies, for injuries, claims, losses, expenses or damages arising out of DLZ's services or this agreement from any causes including, but not limited to, DLZ's negligence, error, omissions, strict liability, or breach of contract, will not exceed the total compensation received by DLZ under this agreement.

14. DISPUTES: Any claim or controversy arising out of or relevant to this agreement, or the breach thereof, shall be settled by binding arbitration in the state in which the project is located, in accordance with the rules of the American Arbitration Association, and judgment upon any award rendered by the arbitrator(s) may be rendered in any court having jurisdiction thereof.

15. STATUTE OF LIMITATIONS: The parties agree that the time period for bringing claims regarding DLZ's Service's under this agreement expires on the earlier of one year after completion of the project, or two years after completion of DLZ's project services.

16. DELAYS: DLZ is not responsible for delays caused by persons or circumstances for which DLZ is not responsible.

17. SHOP DRAWINGS: If DLZ's scope of services includes reviewing shop drawings, such reviews are solely with regard to their general conformance with the design concept, and not for the purpose of reviewing or approving their accuracy, completeness, dimensions, quantities, constructability, compatibility with other construction components, or compliance with the requirements of the construction contract documents, all of which remain the contractor's responsibility. DLZ is not responsible for reviewing or approving the contractor's safety precautions or construction means, methods, sequences or procedures.

18. ACCEPTANCE: Both parties will consider DLZ's initiation of services prior to execution of this agreement in order to accommodate CLIENT, at CLIENT's request, as CLIENT's formal acceptance of all of the terms and conditions in this agreement.

19. STANDARD OF CARE: DLZ will perform its services with the care and skill ordinarily exercised by members of its profession currently practicing under similar conditions in the same locale. DLZ does not make, and expressly disclaims, any other warranties, express or implied, relating to its services including, without limitation, warranties of merchantability and fitness for a particular purpose. DLZ shall be entitled to rely on all CLIENT-provided information except to the extent otherwise stated in the agreement.

<i>CLASSIFICATION</i>	<i>HOURLY RATE CHARGE</i>
Principal/Division Manager	\$186.00
Senior Project Manager/Department Manager	\$165.00
Project Manager	\$155.00
Engineer VI/Surveyor VI	\$155.00
Engineer V/Surveyor V	\$145.00
Engineer IV/Surveyor IV	\$129.00
Engineer III/Surveyor III	\$119.00
Engineer II/Surveyor II	\$103.00
Engineer I/Surveyor I	\$93.00
Senior Architect	\$155.00
Architect	\$129.00
Architect Intern	\$93.00
Landscape Architect	\$119.00
Senior Geologist/Senior Environmental Scientist	\$134.00
Geologist/Environmental Scientist	\$98.00
Senior Environmental Analyst	\$127.00
Environmental Analyst	\$100.00
Senior Programmer	\$132.00
Programmer	\$114.00
Senior GIS Analyst	\$124.00
GIS Analyst	\$114.00
GIS Technician	\$85.00
Senior CAD Operator/Designer	\$103.00
CAD Operator/Technician II	\$88.00
Intern/Technician I	\$75.00
Construction Project Manager	\$145.00
Senior Construction Inspector	\$114.00
Construction Inspector	\$85.00
2 Person Survey Crew	\$201.00
1 Person Survey Crew	\$145.00
Clerical	\$59.00

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: January 11, 2022	Title: Development Agreement West Urban
Submitted By: Frank Peterson	Department: City Manager
Brief Summary: Staff is seeking approval of the attached development agreement.	
Detailed Summary. West Urban Properties was selected as one of three contractors for the ARPA-funded infill housing program. The goal of the program is to continue in-filling vacant lots in our core neighborhoods while ensuring the housing units are offered in a more-affordable manner. Staff awaits final guidance from the US Treasury related to required level of affordability, but we expect that a portion of the homes will be designated to families with incomes between 60% and 80% of AMI. The City will maintain ownership of the infill sites throughout the construction process, and will control the sale process. The City Commission will decide on each formal sale at the time of the sale – similarly to the Midtown Square projects. This will allow the City Commission more discretion in determining the depth of the affordability component of the program. The most notable change from the model agreement previously presented to the City Commission in 2021 is the anticipated cost per house. We have raised the maximum to \$235,000 to address increases in materials. While wood costs are down, it seems that all other material costs are up. Access to housing at all levels of affordability is difficult now. We are in a prime position to lead the county in new housing while addressing the lack of livable housing for lower income earners, and I recommend that we do so. Note that the addresses are not included. There are hundreds of addresses to select from, but many were acquired via the tax foreclosure process and have title issues to address. Staff feels comfortable working with the builder to identify the most-appropriate building sites that have clear title.	
Amount Requested: \$3,125,000	Amount Budgeted: N/A
Fund(s) or Account(s): State/Federal Grants	Fund(s) or Account(s): N/A
Recommended Motion: Approve the agreement and authorize the City Manager to sign.	

WEST URBAN PROPERTIES ARP INFILL HOUSING DEVELOPMENT AGREEMENT

RESIDENTIAL CONSTRUCTION AGREEMENT

This ARP InFill Housing Development Agreement (the "Agreement") is between the City of Muskegon, of 933 Terrace Street, Muskegon, MI 49441 ("Owner") and West Urban Properties, LLC of 3265 Walker Ave., Ste. D, Grand Rapids, MI 49544 (Builder").

Background

Builder and Owner agree that Builder shall construct _____ single family residences (the "Residences") for Owner on the terms and conditions set forth in this Agreement and in the general conditions attached as Exhibit A ("General Conditions"). Builder will be paid by Owner from funds obtained by Owner pursuant to _____ ("ARP Funds"). As such, there are limitations on potential Buyers of the residences exist and will be more formally declared by the federal government in the future.

The parties agree as follows:

1. **Building Site.** Owner owns the building sites located in the City of Muskegon and described on Exhibit B (the "Properties"). Owner has agreed to hire Builder to build the Residences on the Properties.
2. **The Residence.** Builder and City staff shall agree, in writing, as to the materials, floor plan design, and all cost impacting details, and the construction cost for each of the Properties attached as Exhibit B. Each Property shall have a not to exceed construction cost of \$235,000. Allowances provided for certain items, such as carpeting, light fixtures, window treatments, etc., and shall be set forth in the above referenced document. for **The Price may change in the event Builder and Owner agree to change orders, modifications or extras as defined below.** Builder shall build the Residences in accordance with the mutually agreed to plans and specifications. Any features of the Residence that are not explicitly described in the Plans shall be determined in the sole discretion of Builder. For example, unless specifically set forth on the Plans, the location of all electrical outlets shall be as determined by Builder.
3. **Price.** The price for constructing the Residences as determined in Paragraph 2 above shall be paid one half by Owner and one half by Builder. As to Owner's obligations, Owner shall establish the "ARP In Fill Housing Fund – West Urban" ("Fund") and deposit \$3,125,000 into that Fund. All monies owed by Owner to Builder pursuant to this Agreement shall be paid from the Fund. Owner shall have no obligation to pay any monies to Builder pursuant to this Agreement from any other source of funds. Upon termination of this Agreement

or construction of all Residences provided for pursuant this Agreement, all monies left in the Fund shall revert to the Owner.

In the event the actual cost of any allowance exceeds the estimated amount ("Additional Allowance Amount"), Owner shall pay the Additional Allowance Amount within 30 days of Builder's invoice. No Additional Allowance Amount shall be billed through Builder without the express prior written consent of Builder.

4. **Costs Included.** The Price shall include the cost of the building permits and materials purchased and installed in the Residences. Owner shall waive or pay for all water and sewer connection fees and Builder shall be responsible for all other fees, specifically including mechanical, plumbing, electrical and any other construction and building permit fees.

5. **Payment of the Price.** Builder shall be responsible for 50% of the purchaser price for each residence. As to the remaining 50% of the purchase price Owner shall pay in accordance with the following schedule ("Payment Schedule"):

- a. Foundation installed..... 25% of the Owner's portion of the Price
- b. Roof sheeting installed.....35% of the Owner's portion of the Price
- c. Plaster or drywall installed..... 30% of the Owner's portion of the Price
- d. Substantial completion/certificate of occupancy.....Balance due in full

6. **Modifications/Extras.** No modifications to the Plans ("Modifications") or requests for additional construction ("Extras") the cost of which exceeds \$200 shall be binding upon either party, unless the Modifications and/or Extras are set forth on a written change order that is signed by Builder and City Manager for Owner ("Change Order"). The Change Order must provide a detailed description of the Modifications and/or Extras and the cost or credit to be charged. In those instances where a Change Order increases or decreases the Price by more than \$200 ("Adjusted Price"), the Adjusted Price shall be paid according to the remaining portion of the Payment Schedule.

7. **Minor Modifications.** Builder and Owner may from time to time agree on minor modifications, the cost for which is less than \$200 ("Minor Modifications"). Minor Modifications may be made either in writing or by a verbal agreement between Builder and City Manager for Owner. The cost or credit for Minor Modifications shall be added to or credited against the Price and paid according to the remaining portion of the Payment Schedule.

8. **Possession.** Owner shall be entitled to possession of the Residence upon payment of the Price or Adjusted Price in full. Upon payment in full, Builder shall deliver to Owner a completed sworn statement and a full unconditional waiver of lien. Payment of the Price or Adjusted Price by Owner shall constitute the acceptance of the Residence and a waiver of all known claims of Owner against Builder.

9. **Failure to Pay.** If Owner fails to make a payment within 30 days from the date due, Builder may, upon written notice to Owner, terminate this Agreement and recover from

Owner the Owner's portion of the Price if the Residence is complete or, if the Residence is not complete, the 50% of the fair market value for all work performed by Builder and any laborer or sub-contractor of Builder and 50% of the actual cost of all materials provided and for any loss sustained by Builder in connection with the construction of the Residence, including, but not limited to, lost profits in connection. Notwithstanding the foregoing, Builder, in the event Owner fails to make the required payments, reserves the right to complete the Residence and Owner shall pay 50% of the Price in full.

10. **Estimated Completion Date.** Builder shall commence construction of the Residences within 60 days from the date this Agreement is fully executed. ("Commencement Date"). Builder shall endeavor to complete the Residences within 365 days of the Commencement Date ("Completion Date"). Provided, that both the Commencement Date and the Completion Date may be extended as a result of circumstances beyond the control of Builder, including, but not limited to, delays caused by suppliers or subcontractors, delays for utility hook-ups, Acts of God, labor disputes, governmental inspections, regulations, or permit processes, material back orders, Owner requests for Change Orders, fire, injury or disability to Builder or weather.

11. **Sale of Properties.** Owner is using ARP funds for its portion of the construction costs. As such, Owner shall comply with all applicable rules implementing the ARP program, in particular all Buyers shall have income levels under 120% of the Area Median Income (AMI) for Muskegon County, as defined by the Michigan State Housing Development Authority ("MSHDA"). Owner shall be responsible for verifying Buyer's eligibility and income to ensure Buyer's qualifications to participate as a Buyer.

Owner shall maintain ownership of the Properties described in Exhibit B during the construction and marketing period. Once Builder has been reimbursed its portion of the Construction costs of a Property, City may sell the Property free and clear of any obligations imposed by this Agreement.

12. **Sale Proceeds.** Upon sale of a Property to the extent that Builder has not already been reimbursed its cost of construction, Builder shall be reimbursed its cost of construction. Owner may use the balance of the proceeds for any purpose or deposit in the City of Muskegon Public Improvement Fund or any other fund so specified by the Muskegon City Commission.

13. **General Conditions.** This Agreement is subject to and includes all of the General Conditions attached to this Agreement as Exhibit A and Warranty attached to this Agreement as Exhibit C.

Builder - _____

Dated: _____, _____

Owner -

Dated: _____, _____

Dated: _____, _____

EXHIBIT A

GENERAL CONDITIONS

1. **Evidence of Credit.** Builder's obligation to commence construction of the Residences is expressly conditioned on Owner depositing \$3,125,000 into the ARP In-Fill Housing Fund – West Urban ("Credit Evidence"). Payments required by the Payment Schedule shall be made by Owner directly to Builder within five days after presentation of a proper partial unconditional waiver of lien, request for payment, and sworn statements before making payments at each stage of completion as required above. Builder shall not under any circumstances be required to waive any future lien rights that it may have by reason of work and/or materials thereafter furnished.

2. **Builder's Warranties.** All building materials used in the construction of the Residence shall be new. Builder guarantees its workmanship for a period of one year from the date of certificate of occupancy to the standards set forth in the most current version of the Construction Performance Guidelines as published by the National Association of Homebuilders. Within that period, Builder may replace, at its option, any materials incorporated into the Residence which are defective, provided the manufacturer's warranty is still in full force and effect and, in fact, the manufacturer honors that warranty. To make a claim under this warranty, Owner must give Builder written notice of any such defect in the workmanship and/or materials promptly upon discovery and not later than expiration of the one year warranty period. This warranty does not apply to workmanship or materials requiring repair or replacement because of normal wear and tear or natural settling. Builder shall turn over and transfer to Owner all manufacturer's warranties that are delivered directly to Builder by the manufacturer.

3. **Owner's Warranties.** Owner covenants and warrants that the Property is owned by Owner in fee simple, free and clear of all liens. Owner shall locate the exact location of the Residence on the Property. All corners of the Property and the Residence shall be clearly marked with surveyor stakes. Owner covenants and agrees that such location is in compliance with all applicable federal, state and local rules and regulations, including, but not limited to, building restrictions, set-back requirements, sand dune and wetland laws, and regulations and zoning ordinances.

4. **License.** Builder is a residential builder and a residential maintenance and alteration contractor and is required to be licensed under article 24 of Act 299 of the Public Acts of 1980, as amended, being sections 339.2401 to 399.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. A Plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended being sections 338.901 to 338.917 of the Michigan Compiled Laws. Builder is licensed by the State of Michigan as a licensed Michigan Contractor and maintains its license in good standing. Builder's License and ID numbers are _____ and _____, respectively.

5. **Laws, Ordinances and Regulations.** In connection with the construction of the Residence, Builder shall meet and comply with all applicable laws, ordinances, and regulations.

6. **Notice of Commencement.** Owner shall deliver a Notice of Commencement in accordance with the Michigan Construction Lien Act within ten days of this Agreement.

7. **Diligent Pursuit.** Builder shall diligently pursue its obligations under this Agreement. If Owner believes that Builder has failed to comply with this paragraph, it shall provide Builder not less than 15 days written notice of such non-compliance, a list of Owner's specific complaints, and a reasonable time

within which Builder shall cure any such reasonable complaints. Until Owner fully complies with the notice provisions set forth in this paragraph, Owner may not replace Builder with any other party to complete construction and may not deduct from the Price any amount paid by Owner to complete construction in accordance with the Plans.

8. **Insurance.** Builder shall procure and maintain an "all risk" insurance policy and shall name Owner as an additional named insured. Builder shall provide Owner with evidence of such insurance upon request. Builder shall also carry public liability insurance with coverage limits not less than \$300,000 single-limit coverage and worker's compensation insurance in an amount not less than the statutory minimum. Such policies shall name Owner and their mortgagee as additional named insured. Builder shall provide Owner with evidence of such insurance upon request. Owner and Builder waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph.

9. **Miscellaneous.**

a. Applicable Law. This Agreement is executed in, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan.

b. Entire Agreement. This writing shall constitute the entire Agreement, and shall supersede any other Agreements, written or oral, that may have been made or entered into by the parties with respect to the subject matter hereof and shall not be modified or amended, except in a subsequent writing signed by the party against whom enforcement thereof is sought.

c. Binding Effect. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

d. Full Execution. This Agreement requires the signature of both parties. Until fully executed on a single copy or in counterparts, this Agreement is of no binding force or effect, and if not fully executed, this Agreement is void.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding upon the parties when one or more counterparts, individually or taken together, shall bear the signatures of all parties.

f. Non-Waiver. No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of the Agreement.

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

h. No Discrimination. Discrimination on the basis of religion, race, creed, color, national origin, age, sex, marital status, or handicapped condition by either party in respect to the construction of the Residence is prohibited.

i. Assignment or Delegation. Neither Builder nor Owner may assign all or any part of this Agreement. Provided, that Builder may delegate all or any part of its obligations to perform the services under this Agreement, to any persons or entities that Builder, in its sole discretion, deems appropriate, including sub-contractors. Such delegation shall be at the sole expense of Builder unless otherwise provided.

j. Notices. All required or permitted written notices shall be deemed effective and duly given when: (i) personally delivered; (ii) sent by telephone facsimile; (iii) one day after depositing in the custody of a nationally recognized receipted overnight delivery service; or (iv) two days after posting in the U.S. first class, registered or certified mail, postage prepaid, to the recipient party at the address as set forth at the outset of this Agreement, or to such other address as the recipient party shall have furnished to the sender in accordance with the requirements for the giving of notice.

k. Pronouns. For convenience, Owner has been referred to this Agreement sometimes in the singular and at other times in the plural.

Builder -

Dated: _____, _____

Owner -

Dated: _____, _____

Dated: _____, _____

EXHIBIT B

Property Addresses, Plans and Specifications, and Construction Cost

EXHIBIT C

LIMITED WARRANTY