

MUSKEGON COUNTY BOARD OF COMMISSIONERS
Community Development / Strategic Planning Committee

AGENDA

via Zoom and in-person at: Michael E. Kobza Hall of Justice, 990 Terrace Street, Muskegon, MI 49442

January 13, 2022 - 3:00 p.m.

Doug Brown, Chairman
Susie Hughes, Vice-Chair

Connect to Zoom from your computer, tablet or smartphone at: <https://rb.gy/qtyheg>

Phone: (312) 626-6799

Meeting ID: 865 6688 4544

Passcode: 913438

Cell phones may mute & unmute by dialing *6
Raise and lower hand to speak by dialing *9

To raise your digital hand from your PC or
MAC, at the bottom of the window on the right
side of the screen, click the button labeled
"Raise Hand"

View the meeting on Facebook at:
<https://www.facebook.com/MuskegonCountyMI>

- 1) Call to Order
- 2) Roll Call
- 3) Approval of Agenda
- 4) Approval of Minutes of December 9, 2021
- 5) Public Comment (on an agenda item)
- 6) Items for Consideration

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the Commission and state their name for the record. Comments shall be limited to **two (2) minutes** for each participant, unless time is extended prior to the public comment period by a vote of the majority of the Commission.

- CDSP22/01 – 01** (Public Works/Matt Farrar) To approve the amendment to the Consumers Energy license for environmental testing and remediation activities at Veterans Memorial Park and Authorize the Chair to sign the same.
- CDSP22/01 – 02** (CVB/Bob Lukens) To delete a part-time Sales Executive and create a full-time Convention and Visitors Bureau (CVB) Sales Executive position at pay table/grade NX-00219 (\$23.924/hr - \$30.279/hr) and adjust the budget accordingly.
- CDSP22/01 – 03** (Public Works/Matt Farrar) To approve the sale of lot #11 in the County's Business Park North for \$5,000 per acre for a total purchase price of \$13,500, to Jason Baerman, and authorize the Chair to sign the purchase agreement and authorize the Administrator to sign all necessary documents related to closing and earmark the proceeds towards paving the Walton Street Parking lot.
- CDSP22/01 – 04** (Public Works/Matt Farrar) To approve the sale of lot #7 in the County's Business Park North for \$5,000 per acre for a total purchase price of \$20,000, to Dales' Tree Service, LLC., and authorize the Chair to sign the purchase agreement and authorize the Administrator to sign all necessary documents related to closing and earmark the proceeds towards paving the Walton Street Parking lot.

CDSP22/01 – 05

(Parks/Bob Lukens) To increase the pay scale of Muskegon County Parks seasonal Park Ranger/Dock Security (16 positions), T22311 from pay table/grade TS-00305, \$11.00/hr - \$11.50/hr to TS-00310, \$13.00/hr - \$13.50/hr, and Park Crew Leaders (2 positions), T20001 and T20002, from pay table/grade TS-00330, \$12.75/hr - \$13.25/hr to TS-00335, \$14.75hr - \$15.25/hr.

CDSP22/01 – 06

(Parks/Bob Lukens) To approve the Community Project Fund Agreement between the Community Foundation for Muskegon, the County of Muskegon and the Land Conservancy of West Michigan to benefit Dune Harbor Park, and to authorize the County Administrator to provide disbursement approvals for expenditures under \$25,000 for Dune Harbor Park project (payment costs, and/or reimbursements).

- 7) Unfinished Business
- 8) New Business
- 9) Public Comment
- 10) Final Board Comment
- 11) Closed Session: Pursuant to MCL15.268(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- 12) Adjourn (call of the Chair)

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

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours' notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520

MUSKEGON COUNTY BOARD OF COMMISSIONERS
Community Development & Strategic Planning Committee

via Zoom and in-person at: Michael E. Kobza Hall of Justice, 990 Terrace Street, Muskegon, MI 49442

December 9, 2021 - 3:00 p.m.

Doug Brown, Chair
Susie Hughes, Vice-Chair

MINUTES

CALL TO ORDER

The meeting was called to order by Commissioner Brown at 4:25 p.m.

ROLL CALL

Present: Kim Cyr, Marcia Hovey-Wright, Susie Hughes (Attended from Muskegon Township via Zoom due to medical concerns), Zach Lahring, Charles Nash, Bob Scolnik, Rillastine Wilkins, Malinda Pego, Doug Brown

Also Present: Mark Eisenbarth, County Administrator; Kathy Tharp, Administrative Coordinator

APPROVAL OF MINUTES

It was moved by Commissioner Hovey-Wright, supported by Commissioner Hughes, to approve the minutes of the November 16, 2021 meeting as written. [Voice Vote] **Motion carried.**

PUBLIC COMMENT

None

ITEMS FOR CONSIDERATION

CDSP21/12 - 35 It was moved by Commissioner Nash, supported by Chairman Scolnik, to approve the FY2022 Lakeshore Museum Center budget.

Roll Call:

Yes: Susie Hughes, Zach Lahring, Charles Nash, Malinda Pego, Bob Scolnik, Rillastine Wilkins, Kim Cyr, Marcia Hovey-Wright, Doug Brown

No: None

Motion carried.

CDSP21/12 - 36 It was moved by Commissioner Pego, supported by Commissioner Nash, to approve the proposed Muskegon County Parks overnight camping fee increase of \$2.00 per night, with Blue Lake and Pioneer Parks 2022 rates at \$34.00 per night and Meinert Park rate at \$36.00 per night.

Roll Call:

Yes: Zach Lahring, Charles Nash, Malinda Pego, Bob Scolnik, Rillastine Wilkins, Kim Cyr, Marcia Hovey-Wright, Susie Hughes, Doug Brown

No: None

Motion carried.

CDSP21/12 - 37 It was moved by Commissioner Hughes, supported by Commissioner Hovey-Wright, to authorize Parks Department staff to begin the recruitment process for new caretakers at Meinert County Park. [Voice Vote] **Motion carried.**

UNFINISHED BUSINESS

Commissioner Pego inquired of Corporate Counsel whether Commissioner Nash violated the OMA. Corporate Counsel indicated he did not.

NEW BUSINESS

None

PUBLIC COMMENT

None

FINAL BOARD COMMENT

None

ADJOURNMENT

There being no further business to come before the Community Development & Strategic Planning Committee, the meeting adjourned at 4:39 p.m.

Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Matthew Farrar

Committee Date: 2022-01-13

Requesting Department: Public Works

Full Board Date: 2022-01-18

Budget:

Agenda Number: CDSP22/01 - 01

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to approve the amendment to the Consumers Energy license for environmental testing and remediation activities at Veterans Memorial Park and Authorize the Chair to sign the same.

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

In 2018, the County of Muskegon granted Consumers Energy a License for Environmental Testing and Remediation Activities to assess the environmental condition of Veteran’s Memorial Park and implement appropriate remediation activities. Consumers installed four monitoring wells. Attached is a copy of the original License for your convenience.

Due to the presence of contamination, Consumers Energy is required to continue monitoring activities in accordance with the WHMD Order No. 115-04-31-01-05-16A. Accordingly, Consumers Energy is requesting that the original License be amended to address Consumers Energy’s obligation under the WHMD Order to allow for semi-annual monitoring of the four wells and to extend the term of the license until Consumers Energy’s obligations have been met. Attached please find the proposed Amendment to License.

<p>Kristen Wade, HR Director Analysis Required? No</p>	<p>Finance Manager: <input checked="" type="checkbox"/> </p>
<p>Michael Homier, Corporate Counsel Analysis Required? Yes</p>	<p>Mark Eisenbarth, County Administrator Recommendation: <input checked="" type="checkbox"/> </p>

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Public Works		BUDGETED X	NON-BUDGETED	PARTIALLY BUDGETED
REQUESTING DEPARTMENT Public Works	COMMITTEE DATE January 6, 2022	REQUESTOR SIGNATURE Matthew Farrar		
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>In 2018, the County of Muskegon granted Consumers Energy a License for Environmental Testing and Remediation Activities to assess the environmental condition of Veteran’s Memorial Park and implement appropriate remediation activities. Consumers installed four monitoring wells. Attached is a copy of the original License for your convenience.</p> <p>Due to the presence of contamination, Consumers Energy is required to continue monitoring activities in accordance with the WHMD Order No. 115-04-31-01-05-16A. Accordingly, Consumers Energy is requesting that the original License be amended to address Consumers Energy’s obligation under the WHMD Order to allow for semi-annual monitoring of the four wells and to extend the term of the license until Consumers Energy’s obligations have been met. Attached please find the proposed Amendment to License.</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
Move to approve the waiver of tipping fees for the Free Dump Day Program in 2022.				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE & MANAGEMENT ANALYSIS:</u>		
<u>CORPORATE COUNSEL ANALYSIS:</u>		<u>ADMINISTRATOR RECOMMENDATION:</u>		
If motion originates from a Statutory Board, Authority or Advisory Committee, please provide the date the motion was approved by that Board/Authority/Committee				
Date				
AGENDA DATE:	AGENDA NO.:	BOARD DATE:	PAGE NO.	

Revised 12/15/21

FIRST AMENDMENT TO LICENSE
FOR ENVIRONMENTAL TESTING AND REMEDIATION ACTIVITIES

PIN: 24-117-100-0002-00

Veterans Memorial Park

Order #: 38358684

THIS FIRST AMENDMENT TO LICENSE FOR ENVIRONMENTAL TESTING AND REMEDIATION ACTIVITIES (hereinafter "First Amendment") is made this _____ day of _____, 20___, the date this First Amendment has been executed by all parties, between the County of Muskegon, a Michigan municipal corporation, 990 Terrace Street, Muskegon, Michigan 49445 (hereafter "Licensor") and CONSUMERS ENERGY COMPANY, (formerly known as Consumers Power Company), a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201 ("Consumers Energy").

WHEREAS, Licensor and Consumers Energy entered into a certain License for Environmental Testing and Remediation Activities (hereinafter the "License") dated October 18, 2018 ("Effective Date"), whereby Licensor granted unto Consumers Energy a license to allow for the assessment of the environmental condition and the implementation of appropriate remediation activities on certain land located in the City of Muskegon, County of Muskegon, State of Michigan, to wit: 401 Causeway, Muskegon, Michigan 49445 – Tax Parcel Number: 24-117-100-0002-00 – Commonly known as Veterans Memorial Park ("Land").

WHEREAS, Licensor and Consumers Energy have agreed to certain revisions of the License concerning the Purpose and Termination.

NOW, THEREFORE, Licensor and Consumers Energy hereby agree to amend the License as follows:

1. Paragraph 1 of the License which reads as follows:

1. Purpose. The purpose of this License is to allow for assessment of the environmental condition of the land and the implementation of appropriate remediation activities. Approximate drilling locations, for the installation of four (4) monitoring wells, are provided on the attached Exhibit A.

is hereby amended to read as follows:

1. Purpose. The purpose of this License is to allow for assessment of the environmental condition of the land and the implementation of appropriate remediation activities, *which includes the installation, maintenance, and semi-annual monitoring of four (4) monitoring wells*. Approximate drilling locations, for the installation of four (4) monitoring wells, are provided on the attached Exhibit A.

2. Paragraph 6 of the License which reads as follows:

6. Termination. This License shall terminate twenty-four (24) months from the date stated above [October 18, 2018].

is hereby amended to read as follows:

6. Termination. This License shall terminate on December 31, 2027 or upon implementation of a termination clause contained within the WHMD Order No. 115-04-31-01-05-16A, whichever date is sooner.

In all other respects, the License, as amended by this First Amendment, shall remain unchanged in all other respects and in full force and effect.

This First Amendment may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this First Amendment, including this First Amendment, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

The parties hereto have or have caused this First Amendment to be executed as of the dates written below.

Licensors:

County of Muskegon
A Michigan municipal corporation

By: _____
Name: Malinda Pego
Its: Muskegon County Board of Public Works Chair

Date: _____

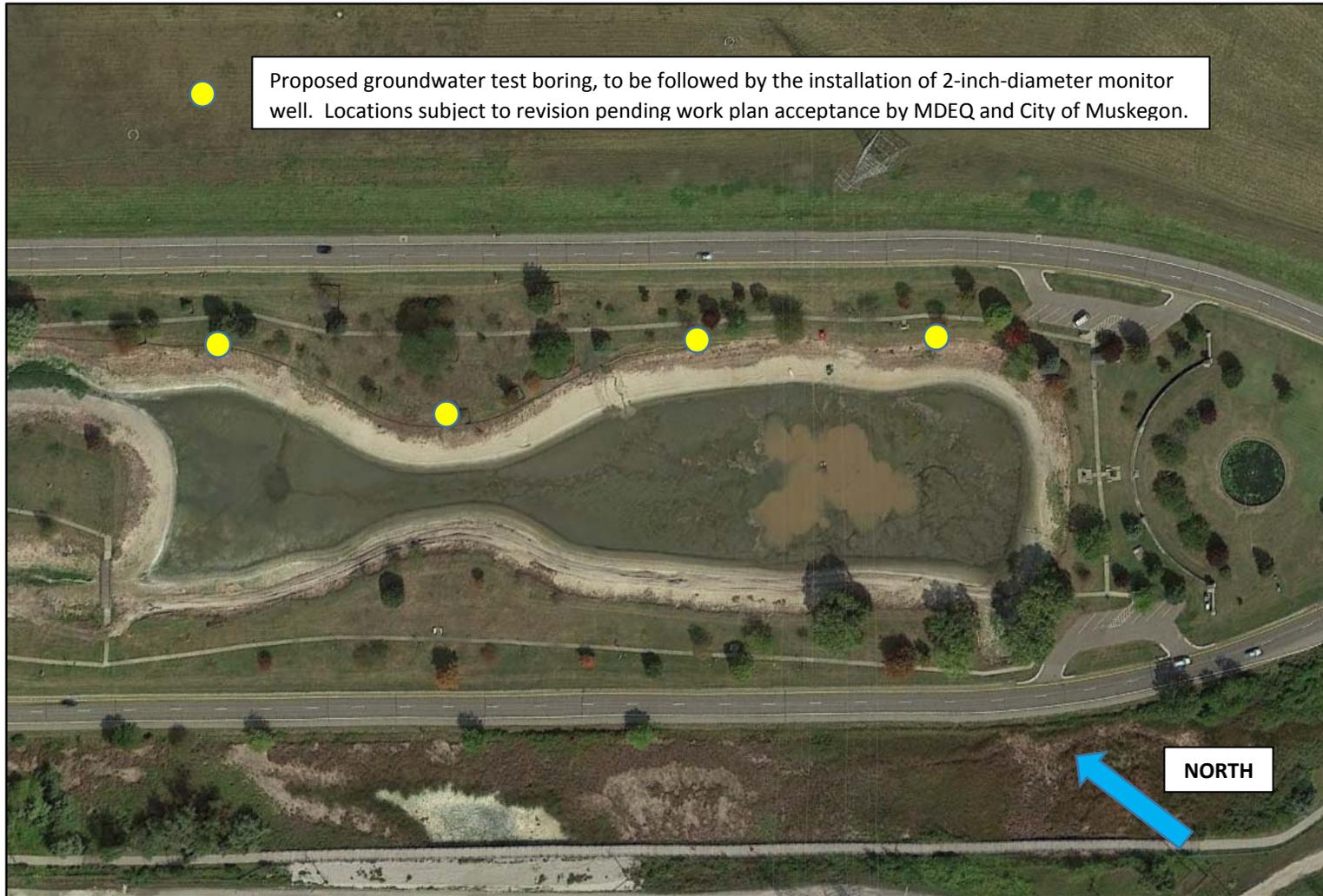
Consumers Energy:

Consumers Energy Company,
a Michigan corporation

By: _____
Name: Stephen Schoenow
Its: Real Estate Project Manager

Date: _____

Proposed Monitor Well Locations
Veterans Memorial Park, Muskegon, Michigan



Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Robert M. Lukens

Committee Date: 2022-01-13

Requesting Department: Community Development
- CVB

Full Board Date: 2022-01-18

Budget: Partially Budgeted

Agenda Number: CDSP22/01 - 02

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to delete a part-time Sales Executive and create a full-time Convention and Visitors Bureau (CVB) Sales Executive position at pay table/grade NX-00219 (\$23.924/hr - \$30.279/hr) and adjust the budget accordingly.

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

In October 2021, the CVB requested and received approval from the County Board to create a part-time CVB Sales Executive position rather than the full-time position which was eliminated due to the pandemic. That position has been challenging to fill, due to the fact that experienced CVB sales executives are typically looking for full-time work. The applications received had minimal meetings and conventions sales experience, which is essential in the CVB sales executive position.

Due to the effects of the pandemic in 2020 and until June of 2021, meetings and conventions in Michigan ground to a halt. With the change in capacity limits in June 2021 to allow full-scale indoor meetings and events, Visit Muskegon must increase its sales efforts to the meetings and conventions market. The sales executive will solicit and book meetings and conventions into the convention center and maintain contact with local, state, regional and national association, organization, corporate and government meeting and event planners.

<p>Kristen Wade, HR Director Analysis Required? Yes</p> 	<p>Finance Manager:</p> <input checked="" type="checkbox"/> 
<p>Michael Homier, Corporate Counsel Analysis Required? No</p>	<p>Mark Eisenbarth, County Administrator Recommendation:</p> <input checked="" type="checkbox"/> 

Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Matthew Farrar

Committee Date: 2022-01-13

Requesting Department: Public Works

Full Board Date: 2022-01-18

Budget: Non-Budgeted

Agenda Number: CDSP22/01 - 03

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to approve the sale of lot #11 in the County’s Business Park North for \$5,000 per acre for a total purchase price of \$13,500, to Jason Baerman., and authorize the Chair to sign the purchase agreement and authorize the Administrator to sign all necessary documents related to closing and earmark the proceeds towards paving the Walton Street Parking lot..

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

Jason Baerman is interested in purchasing lot #11 in the County’s Business Park North for \$5,000 per acre. Lot #11 has 2.7 acres for a total sale price of \$13,500.

To date, the County has sold lots 15, 16, 17, 18, & 19 all on Industrial Parkway, with lot 7 under contract for \$5,000 per acre.

The remaining lots are as follows: 1, 2, 3, 4, 5, 6, 8, 9, 10, & 14.

Staff recommends acceptance of this offer and approval of a purchase agreement prepared by Corporate Counsel.

<p>Kristen Wade, HR Director Analysis Required? No</p>	<p>Finance Manager: <input checked="" type="checkbox"/> </p>
<p>Michael Homier, Corporate Counsel Analysis Required? Yes</p>	<p>Mark Eisenbarth, County Administrator Recommendation: <input checked="" type="checkbox"/> </p>

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made as of the Effective Date by and between MUSKEGON COUNTY, MICHIGAN whose address is 990 Terrace Street, Muskegon, Michigan 49442 ("Seller") and Jason Baerman, or his affiliated assignee, whose address is 1234 W. Giles Road, Muskegon, Michigan 49445 ("Purchaser"). Seller and Purchaser shall be collectively known as the "Parties" and individually known as a "Party."

ARTICLE I PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, and Purchaser agrees to purchase, the following:

- (a) The certain parcel of land situated in Dalton Township, Muskegon County, Michigan, more particularly described on **Exhibit A** within the Muskegon County Business Park-North, together with all rights and appurtenances pertaining to such property (the "Land"), and
- (b) Any buildings, structures, fixtures and other improvements on the Land, if any (the "Improvements").

1.2 Property Defined. The Land and Improvements are referred to collectively as the "Property."

1.3 Effective Date. This Agreement shall become effective on the date when the last of Seller and Purchaser has signed this Agreement, which date will be deemed the "Effective Date."

1.4 Permitted Exceptions. The Property shall be conveyed subject to the matters which are, or are deemed to be, permitted exceptions pursuant to this Agreement (the "Permitted Exceptions").

1.5 Purchase Price. Seller is to sell and Purchaser is to purchase the Property for a total of Thirteen Thousand Five Hundred Dollars (\$13,500).

1.6 Payment of Purchase Price. The Purchase Price, as increased or decreased by prorations and adjustments, shall be payable in full at Closing in cash by wire transfer of immediately available federal funds.

1.7 Earnest Money.

- (a) Simultaneously with the delivery of this Agreement, Purchaser will deposit with Transnation Title Company of Michigan (the "Title Company") the sum of Five Hundred Dollars (\$500.00) (the "Earnest Money") in good funds, either by cashier's check or federal wire transfer. The Title Company shall hold the Earnest Money in an account. The Parties may execute an escrow agreement with the Title Company.
- (b) The Earnest Money is fully refundable to Purchaser during the ninety (90) day due diligence period ("Due Diligence Period") which begins upon the Effective Date of this Agreement.

ARTICLE II TITLE AND SURVEY

2.1 Title Examination; Commitment for Title Insurance. Seller shall obtain a commitment to issue an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price (the "Title Commitment") covering the Property from the Title Company, showing all matters affecting title to the Property and binding the Title Company to issue at Closing an Owner's Policy of Title Insurance in the full amount of the Purchase Price, together with copies of all instruments referenced in the Title Commitment.

2.2 Survey. Purchaser may, at its sole cost and expense, obtain a new survey of the Property (the "Survey") no later than thirty (30) days after receipt of the Title Commitment.

2.3 Title Objections; Cure of Title Objections. Purchaser shall have until the thirtieth (30th) day following its receipt of the Title Commitment and any Survey it obtains to notify Seller, in writing, of such objections as Purchaser may have to anything contained in the Title Commitment. Any item contained in the Title Commitment or any matter shown on the Survey to which Purchaser does not timely object shall be deemed a Permitted Exception. If Purchaser timely notifies Seller of objections to title or to matters shown on the Survey, Seller shall have the right, but not the obligation, to cure such objections. Within ten (10) days after receipt of Purchaser's notice of objections, Seller shall notify Purchaser in writing whether Seller elects to attempt to cure such objections. If Seller elects to attempt to cure, and provided that Purchaser shall not have terminated this Agreement, Seller shall have until the date of Closing to attempt to remove, satisfy, or cure the objection. If Seller elects not to cure any objections specified in Purchaser's notice, or if Seller is unable to effect a cure prior to the Closing, Purchaser shall have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Purchaser which Seller is unwilling or unable to cure, and without reduction of the Purchase Price; or (ii) to terminate this Agreement by sending written notice to Seller within ten (10) days after receipt of Seller's election not to cure or the expiration of the period during which Seller is required to so notify Purchaser, as applicable, and upon delivery of such notice of termination, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser, and thereafter neither party shall have any further rights, obligations, or liabilities except to the extent that any right, obligation, or liability expressly survives termination of this Agreement. If, having commenced attempts to cure any objection, Seller later notifies Purchaser that Seller will be unable to effect a cure, Purchaser shall, within five (5) business days after such notice has been given, notify Seller in writing whether Purchaser shall elect to accept the conveyance under clause (i) or to terminate this Agreement under clause (ii).

2.4 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser a warranty deed to the Property to enable the Title Company to issue to Purchaser an ALTA Owner's Policy of Title Insurance (the "Title Policy") covering the Property, in the full amount of the Purchase Price, subject only to the Permitted Exceptions. Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) The lien of all real property taxes and assessments, water charges, sewer assessments, and each other lien or encumbrance of an indefinite or unascertainable amount not then delinquent or which are apportioned in accordance with the provisions of this Agreement.
- (b) Local, state and federal laws, ordinances or governmental regulations, including, but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property.
- (c) Items appearing of record or shown on the Survey not objected to by Purchaser or waived or deemed waived by Purchaser in accordance with Section 2.3.
- (d) Matters affecting the condition of title to the Property created by or with the written consent of Purchaser.
- (e) All other matters affecting title to the Property which are approved or waived by Purchaser as provided in this Agreement.

- (f) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 592. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant.
- (g) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 593. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant.
- (h) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 594. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant. The Restrictive Covenants identified above are referred to as the "Restrictive Covenants".
- (i) Consent Decree entered on or about August 29, 2000 (the "Consent Decree") in *United States of America v Cordova Chemical Company of Michigan, et. al*, Case No. G89-10503-CA, United States District Court for the Western District of Michigan. Purchaser shall comply with, and be bound by, all the provisions of such Consent Decree, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Consent Decree.
- (j) Agreement and Covenants Not to Sue recorded with the Muskegon County Register of Deeds in Liber 3504, Page 720 on October 17, 2002 (the "Covenant Not to Sue"). Purchaser shall comply with, and be bound by, all the provisions of such Agreement and Covenants Not to Sue, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Covenant Not to Sue.

ARTICLE III DUE DILIGENCE PERIOD

3.1 Right of Inspection. During the Due Diligence Period, Purchaser shall have the right to make a physical inspection of the Property, to perform tests on the Property, and to examine such surveys, engineering reports, environmental audits, and similar materials in the possession or under the control of Seller or those obtained by Purchaser at its cost. All such due diligence work and/or entry upon the Property shall fully comply with the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue. Purchaser agrees that Seller is not making any representation or warranty as to the accuracy or completeness of any information and Seller shall have no liability with respect to any matters described therein or the failure of such materials to disclose any matters. Purchaser shall keep confidential all materials (together with any reports and materials prepared by or on behalf of Purchaser and other information obtained by Purchaser, in each case, with respect to the Property) in accordance with, and subject to, the terms and provisions of this Agreement. Prior to conducting any engineering, geotechnical, environmental, or other inspections or studies, Purchaser shall provide advance written notice of the intention and plans for such inspections or studies for Seller's approval, which shall not be unreasonably withheld. Seller also retains the right to be present at any such inspections or studies. If Seller does object to any intention or plan provided by Purchaser, Purchaser and Seller agree to negotiate in good faith to develop an alternative plan for such inspection or study.

Any such inspections and testing shall be performed by companies selected by Purchaser. If Purchaser obtains a Phase I environmental site assessment of the Property and such environmental site assessment recommends additional inspections or testing, Purchaser shall submit such report to Seller. Seller shall have the option to conduct the required inspections, at Seller's expense and present the results to Purchaser. If Seller does not exercise such option, Purchaser may conduct the inspections at its own cost. Purchaser agrees to repair any damage to the Property and to indemnify Seller against and hold Seller harmless from any claim for

liabilities, costs, expenses (including reasonable attorney fees), damages, or injuries arising out of or resulting from the inspection or testing of the Property by Purchaser or its consultants or agents, and notwithstanding anything to the contrary in this Agreement, such obligation to repair and to indemnify and hold harmless Seller shall survive Closing or any termination of this Agreement. Purchaser agrees that Purchaser enters the Property at its sole risk and waives all liability of Seller with respect to personal injury or damage except to the extent caused by Seller's gross negligence or intentional misconduct, provided, however, that this exception shall not in any way limit the protection of governmental immunity available to Seller. Purchaser shall maintain and shall ensure that Purchaser's consultants maintain public liability and property damage insurance in the amount of at least \$1,000,000.00, naming Seller as an additional insured party, and in form and substance adequate to insure against all liability of Purchaser and its consultants, and each of its agents, employees or contractors, arising out of the inspections or testing. Purchaser shall provide written notification, with a copy to Seller, to any licensed site remediation professional undertaking such inspections or testing on behalf of Purchaser's consultants, requiring that any and all reports or results of any and all inspections and studies of the Property shall remain confidential to the extent permitted by applicable law, and shall be released only to Purchaser and Seller and their authorized representatives or as otherwise required by the United States Environmental Protection Agency ("USEPA) and the Michigan Department of Environment, Great Lakes, and Energy ("EGLE"). All inspections and testing shall occur at reasonable times agreed upon by Seller and Purchaser and shall be conducted so as not to interfere unreasonably with the normal operation of the Property or with use of the Property by Seller or any occupants, and in compliance with the documents referenced in Section 2.4(f)-(j). Purchaser agrees to provide a copy of any and all reports or results of any and all inspections and studies of the Property within fifteen (15) calendar days of receipt by Purchaser if Seller requests same.

3.2 Due Diligence.

- (a) Seller may deliver to Purchaser copies of all tests, studies, surveys, title policies, and other substantive documents related to the Property, including zoning ordinances adopted and/or proposed related to uses for the Property, that are in Seller's possession or control (collectively "Seller's Documents"). Buyer is aware that USEPA and EGLE have many documents available regarding the Property.
- (b) Purchaser shall have the Due Diligence Period to inspect, or cause to be inspected, the physical condition of the Property, Seller's Documents, and other matters or conditions relevant to the Property. Any testing to determine the environmental condition of the Property shall be governed by Section 3.1 of this Agreement.
- (c) In the event that, after conducting the inspections referred to in this Agreement, Purchaser does not terminate this Agreement on or before expiration of the Due Diligence Period, Purchaser shall be deemed to have waived all objections with regard to the condition of the Property. If Purchaser timely terminates this Agreement, this Agreement shall terminate and Purchaser shall receive a return of the Earnest Money from the Title Company and each Party shall be relieved of any and all liability except for a provision that expressly survives the termination of this Agreement.
- (d) All inspections and tests performed on the Property by Purchaser or Purchaser's agents, employees, or contractors ("Purchaser's Agents") shall be conducted in compliance with all federal, state, and local laws, orders, regulations, and ordinances, and the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue.
- (e) Purchaser shall obtain any necessary approvals from USEPA and/or EGLE for Purchaser's proposed use by Closing.

3.3 Purchaser's Right of Termination. If Purchaser determines that the Property is not suitable for its purposes, Purchaser shall have the right to terminate this Agreement by giving written notice to Seller prior to the expiration of the Due Diligence Period. If Purchaser gives such notice of termination no later than the expiration of the Due Diligence Period, this Agreement shall terminate and the Earnest Money shall be returned

to Purchaser. If Purchaser fails to give Seller a notice of termination prior to the expiration of the Due Diligence Period, Purchaser shall no longer have any right to terminate this Agreement under this Section 3.3 and shall proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement. Time is of the essence with respect to the Parties' obligations and rights relating to such notice of termination.

3.4 USEPA and EGLE Controls. Purchaser acknowledges and understands that certain Units are controlled by the USEPA and/or EGLE for testing and other activities. This Agreement may also be subject to the approval of USEPA and EGLE prior to Closing.

ARTICLE IV CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall be held through the Title Company, as mutually agreed by the Parties, on a date mutually agreed to by Seller and Purchaser within a reasonable time, but in no event later than thirty (30) days from the expiration of the Due Diligence Period (the "Closing Date"). Time shall be of the essence with respect to the Closing Date. At Closing, Seller and Purchaser shall perform the obligations set forth in Section 4.2 and Section 4.3, the performance of which obligations shall be concurrent conditions.

4.2 Seller's Obligations at Closing. At Closing, Seller shall deliver the following to the Title Company:

- (a) A warranty deed in recordable form, conveying the Property, subject only to the Permitted Exceptions, executed by Seller (the "Deed");
- (b) The Deed shall specifically provide that it is subject to the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue, and that the Restrictive Covenants, Consent Decree and the Covenant Not to Sue are binding upon Purchaser and its successors, assigns, lessees, sublessees and any other occupant or user of all or any part of the Property;
- (c) A Seller's Affidavit of Title, executed by Seller in a form and condition reasonably acceptable to Seller;
- (d) A closing statement (the "Closing Statement") executed by Seller;
- (e) Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller;
- (f) An affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;
- (f) Any other filing required under applicable law in connection with the delivery of the Deed;
- (g) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement;

and to Purchaser: possession and occupancy of the Property, subject to the Permitted Exceptions.

4.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall deliver the following to Seller and the Title Company:

- (a) The full amount of the Purchase Price, as increased or decreased by prorations and adjustments as herein provided, in immediately available wire transferred funds pursuant to Section 1.5 above, it being agreed that at Closing, the Earnest Money shall be delivered to Seller and applied towards payment of the Purchase Price;
- (b) Such evidence as Seller's counsel or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser;
- (c) The Closing Statement executed by Purchaser;

- (d) Such other filings required under applicable law in connection with the delivery of the Deed;
- (e) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement or as are expressly set forth herein;
- (f) An executed agreement to be bound by, and to comply with, the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue; and
- (g) Executed documents referenced in Addendum 1 and notices provided to the appropriate authorities required of Purchaser pursuant to the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue. See Addendum 1.

4.4 Credits and Prorations.

- (a) Real estate taxes shall be prorated between Purchaser and Seller as of the Closing Date, and Seller shall pay any and all real estate taxes affecting the Property for all years prior to the year in which the Closing occurs. Taxes for the year of Closing shall be prorated as of the date of Closing on a calendar year basis and shall be based on taxes due and payable in the calendar year of Closing.
- (b) Assessments, general or special, levied against the Property shall be assumed by Purchaser as of the Closing. Purchaser shall be entitled to rescind this Agreement at any time prior to the end of the Due Diligence Period, if it is not willing to accept responsibility for all existing assessments against the Property which it investigates during its Due Diligence Period.
- (c) The provisions of this Section 4.4 shall survive Closing.

4.5 Closing Costs. Seller shall pay (a) the fees of any counsel, accountants and other advisors representing it in connection with this transaction; (b) the fees for the Title Commitment; (c) one-half (1/2) of any escrow fee which may be charged by the Escrow Agent and Closing Agent; (d) the state and county documentary transfer taxes; and (e) the premium for the Title Policy.

Purchaser shall pay (a) all costs for any endorsements to the Title Policy; (b) the fees of any counsel, accountants and other advisors representing Purchaser in connection with this transaction; (c) the fees for recording the Deed conveying the Property to Purchaser; (d) the cost of the Survey; and (e) one-half (1/2) of any escrow fees which may be charged by the Escrow Agent and Closing Agent.

All other costs and expenses incidental to this transaction and the closing thereof shall be paid by the Party incurring same.

4.6 Conditions Precedent to Obligation of Purchaser. The obligation of Purchaser to consummate the transaction shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion upon written notice to the Seller:

- (a) Purchaser's review and acceptance of the existing assessments applicable to the Property prior to the expiration of the Due Diligence Period, as may be extended; and
- (b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of Closing; and
- (c) Obtaining any required approvals from USEPA and EGLE regarding Purchaser's proposed use of the Property. Purchaser shall diligently and in good faith pursue obtaining such approvals.

If any of the foregoing conditions are not fulfilled or waived by Purchaser by Closing, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser and neither party shall have any further liabilities or obligations under this Agreement except as otherwise expressly provided herein.

4.7 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

- (a) Seller shall have received the Purchase Price as adjusted pursuant to and payable in the manner provided for in this Agreement;
- (b) Purchaser shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement;
- (c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing;
- (d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing;
- (e) Seller shall receive satisfactory assurance that, in the event an Industrial Facilities Tax Exemption, or similar exemption is granted for real or personal property within the Park, Seller will be held harmless from any reduction in tax levied for Dalton Township purposes, unless Seller agrees otherwise;
- (f) Consent, if required, to the sale from USEPA and EGLE; and
- (g) Approval of Seller's Board of Commissioners.

If any of the foregoing conditions are not fulfilled or waived by Seller by Closing, this Agreement shall terminate, the Earnest Money shall be returned to Purchaser and neither Party shall have any further liabilities or obligations under this Agreement except as otherwise expressly provided herein.

ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Purchaser as of the Effective Date:

- (a) Seller is duly organized and is validly existing under the laws of the State of Michigan.
- (b) At Closing, subject to the approval of Seller's Board of Commissioners, Seller will have the full right and authority to enter into this Agreement and to transfer all of the Property to be conveyed by Seller and to consummate the transactions, subject to the consent of USEPA and EGLE.
- (c) At Closing, the persons signing this Agreement on behalf of Seller are authorized to do so.

5.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller:

- (a) Purchaser has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations and all requisite action necessary to authorize Purchaser to enter into this Agreement and to ensure its obligations have been, or by the Closing will have been, taken.
- (b) The person signing this Agreement on behalf of Purchaser is authorized to do so.
- (c) Purchaser is a limited liability company validly formed and in good standing with the State of Michigan.

**ARTICLE VI
DEFAULT**

- 6.1 Default by Purchaser. If Purchaser defaults for any reason other than Seller's default or the permitted termination of this Agreement by either Seller or Purchaser, Seller shall be entitled, as its sole remedy, to terminate this Agreement and retain the Earnest Money as liquidated damages for the breach of this Agreement.
- 6.2 Default by Seller. If the Closing does not occur by reason of default by Seller, Purchaser as its sole remedy shall be entitled to terminate this Agreement and receive a return of the Earnest Money.
- 6.3 Attorney Fees. If either Seller or Purchaser commences any litigation to determine or enforce any of the provisions of this Agreement, the prevailing Party in any such litigation is entitled to recover all of its reasonable costs and expenses (including reasonable attorney fees) from the non-prevailing party.
- 6.4 Survival. The provisions of this Article VI shall survive the termination of this Agreement.

**ARTICLE VII
RISK OF LOSS
NO PROVISION INCLUDED**

**ARTICLE VIII
COMMISSIONS**

- 8.1 Brokerage Commissions. Purchaser and Seller each represent and warrant to the other that they have not worked with any broker or agent in this transaction or if a Party has worked with a broker, that Party shall be solely responsible for any broker commission or fee.

**ARTICLE IX
DISCLAIMERS AND WAIVERS**

- 9.1 No Reliance on Documents. Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy, or completeness of any materials, data, or information delivered by Seller to Purchaser in connection with this transaction. All materials, data and information delivered by Seller to Purchaser in connection with the transaction are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser. Purchaser agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Purchaser shall be for general informational purposes only, (b) Purchaser shall not have any right to rely on any such report delivered by Seller to Purchaser, but, rather, will rely on its own inspections and investigations of the Property, and (c) neither Seller, any affiliate of Seller, nor the person or entity which prepared any such report delivered by Seller to Purchaser, shall have any liability to Purchaser for any inaccuracy in or omission from any such report.
- 9.2 Effect and Survival of Disclaimers. The compensation to be paid to Seller for the Property takes into account that the Property is being sold subject to the provisions of this Article IX. The provisions of this Article IX shall survive Closing.
- 9.3 Sale As Is. Without limiting the generality of any statements, Purchaser shall have a full right to inspect all aspects of the Property prior to Closing. Accordingly, by proceeding to Closing, the Purchaser agrees to accept the Property "as is" with all faults, and without any warranty with representation whatsoever as to the condition of the Property.

**ARTICLE X
MISCELLANEOUS**

10.1 Discharge of Obligations. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are specifically stated to survive Closing.

10.2 Assignment. Purchaser shall not assign this Agreement to any party without the written consent of Seller, which consent will not be unreasonably withheld.

10.3 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service, as of the date of first attempted delivery at the address. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller:

Muskegon County
Attn: Matthew Farrar
131 E. Apple Avenue
Muskegon, MI 49442

With Copy To:

Foster, Swift, Collins & Smith, PC
Attn: Scott H. Hogan
1700 E. Beltline Avenue NE, Suite 200
Grand Rapids, MI 49525

If to Purchaser:

Jason Baerman
1234 W. Giles Road
Muskegon, MI 49445

10.4 Modifications. This Agreement may be modified only in writing signed by the Parties.

10.5 Successors and Assigns. This Agreement binds the permitted successors and assigns of the Parties.

10.6 Entire Agreement. This Agreement, including the exhibits, contains the entire agreement between the Parties pertaining to the subject matter and supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter.

10.7 Further Assurances. Each Party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other Party to consummate more effectively the purposes or subject matter of this Agreement. The provisions of this Section 10.7 shall survive Closing.

10.8 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same Agreement.

10.9 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.10 Applicable Law. This Agreement involves Property located in the State of Michigan and shall in all respects be governed by the laws of the United States and the laws of Michigan. Seller and Purchaser irrevocably submit to the jurisdiction of any state or federal court sitting in the state in which the Property is located in any action or proceeding arising out of or relating to this Agreement and irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state in which the Property is located. Purchaser and Seller agree that the provisions of this Section 10.10 shall survive the Closing of the transaction contemplated by this Agreement.

10.11 No Third-Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party (other than EGLE and USEPA) shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

Exhibit A – Legal Description of the Land;
Exhibit B – Permitted Exceptions; and
Exhibit C – Addendum 1.

10.13 Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.14 Termination of Agreement. If either Purchaser or Seller terminates this Agreement pursuant to a right of termination, such termination shall operate to relieve Seller and Purchaser from all obligations under this Agreement, except for such obligations as are specifically stated to survive the termination of this Agreement.

10.15 Binding Effect. This Agreement shall not be binding upon the parties unless and until it has been approved by the Muskegon County Board of Commissioners.

10.16 Addendum. The Addendum attached as Exhibit C is incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

SELLER:
MUSKEGON COUNTY, MICHIGAN

Dated: _____, 2021

By: _____

Its: _____

PURCHASER:

Dated: _____, 2021

By: _____
Jason Baerman

EXHIBIT A
LEGAL DESCRIPTION

Unit 11, Muskegon County Business Park-North, a Site Condominium according to the Master Deed recorded in Liber 3789, Page 441, First Amendment to Master Deed recorded in Liber 4274, Page 353, as amended, in the Office of the Muskegon County Register of Deeds, and designated as Muskegon County Condominium Subdivision Plan No. 182, together with rights in general common elements and limited common elements as set forth in said Master Deed, and amendments thereto, and as described in Act 59 of the Public Acts of 1978, as amended.

The tax parcel number listed below is provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

PPN 61-07-635-000-011-00

EXHIBIT B
PERMITTED EXCEPTIONS

TO BE SUPPLIED

EXHIBIT C

**ADDENDUM 1 TO PURCHASE AND SALE AGREEMENT BETWEEN
MUSKEGON COUNTY AND JASON BAERMAN, OR HIS AFFILIATED ASSIGNEE**

This Addendum supplements the Purchase and Sale Agreement between Muskegon County, as Seller, and Jason Baerman, as Purchaser. The Parties agree as follows:

1. Agreement and Covenants Not to Sue.

Purchaser acknowledges and represents that it has been given a full and complete copy of the Agreement and Covenants Not to Sue ("Covenant Not to Sue"), dated October 16, 2002, between Muskegon County, the U.S. Environmental Protection Agency ("USEPA"), and the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), including (without limitation) copies of the Restrictive Covenants that were incorporated as Exhibits 3, 4, and 5, to the Covenant Not to Sue. Those restrictive covenants have now been replaced by three Declarations of Restrictive Covenant recorded with the Muskegon County Register of Deeds in Liber 4062, page 592; Liber 4062, Page 593 and Liber 4062, Page 594 (the "Restrictive Covenants"). Purchaser acknowledges and represents that it has received and at Closing will execute the attached written **NOTICE**, as required by the Covenant Not to Sue, stating that the Property is subject to the Covenant Not to Sue. Purchaser hereby consents in writing to be bound by the terms of the Covenant Not to Sue including, but not limited to, the certification requirement in Section VII (Certification) of the Covenant Not to Sue. Purchaser shall be solely responsible for taking the actions required under Section XI, Paragraphs 29-32 (Parties Bound/Transfer of Covenant), of the Covenant Not to Sue, in order for Purchaser to receive the benefit of the USEPA's and EGLE's Covenant Not to Sue. The rights, benefits and obligations upon Seller under the Covenant Not to Sue may be assigned to Purchaser with the consent of USEPA and EGLE. The request for approval must be sent thirty (30) days before the Closing.

2. Valuation of Property and Disclosure to USEPA.

Thirty (30) days prior to the Closing, Seller may provide the USEPA a copy of the most recent property tax assessment or an independent appraisal of the Property, performed within sixty (60) days.

3. Notification to USEPA and EGLE.

- a. A copy of this Purchase Agreement shall be sent to the persons listed in Section XV of the Covenant Not to Sue.
- b. Purchaser shall ensure that each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to the Covenant Not to Sue. A copy of any such deed, title, or other instrument conveying an interest in the Property shall be sent by Purchaser to the persons listed in Section XV of the Covenant Not to Sue. This shall be the responsibility of Purchaser under this Addendum.

4. Access/Notice to Successors in Interest.

a. Commencing on the date that it acquires or leases any interest in the Property, Purchaser shall provide USEPA and EGLE, their authorized officers, employees, representatives, and all other persons performing Response Actions under USEPA or EGLE oversight, an irrevocable right of access at all reasonable times to the Property and to any adjacent property owned or controlled by Purchaser to which access is required for the implementation of Response Actions at the Property, and for the purposes of performing and overseeing Response Actions at the Site under federal and state law. Seller agrees to communicate promptly to Purchaser any notice received by Seller from EGLE or from the USEPA of the timing of Response Actions to be undertaken at the Property or any other Response Action at the Site that may affect use of the Property. In addition, and without limitation of the rights reserved in this paragraph, USEPA and the State of Michigan retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"), part 201 of the Michigan Natural Resources and Environmental Protection Act, MCLA 324.20101, *et seq.* ("Part 201"), and any other applicable statute or regulation, including any amendments thereto.

b. Purchaser shall ensure that assignees, purchasers, successors in interest, lessees, and sub-lessees of the Property shall provide the same access and cooperation as agreed to by Muskegon County in the Covenant Not to Sue. Purchaser shall ensure that a copy of the Covenant Not to Sue shall be provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with Sections V (Access/Notice to Successors in Interest) and XI (Parties Bound/Transfer of Covenant) of the Covenant Not to Sue.

5. Due Care/Cooperation with EGLE and USEPA.

Purchaser shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. Purchaser recognizes that the implementation of Response Actions at the Property may interfere with Purchaser's use of the Property, and may require closure of its operations, if any, or a part thereof. Purchaser agrees to cooperate fully with USEPA and EGLE in the implementation of Response Actions at the Property and further agrees not to interfere with the Response Actions. In the event that Purchaser becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threatened release. Purchaser shall also, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 20114 of Part 201, MCLA 324.20114, or any other law, immediately notify Seller, USEPA and EGLE of such release or threatened release.

6. Restrictions on Uses of Property.

Purchaser shall restrict the uses of the Property to those uses compatible with the Restrictive Covenants and with the industrial land use category or commercial subcategories II, III, or IV land use

as defined in Section 20120a(1) of Part 201 of the Michigan Natural Resources and Environmental Protection Act, as amended in June 1995, or other use that is consistent with the assumptions and basis for the cleanup criteria established pursuant to Section 10120a(1)(g).

Purchaser may withdraw groundwater on Unit 1 to a maximum aggregate withdrawal rate of 150 gallons per minute or less, unless prior to installation, Purchaser makes a demonstration to the satisfaction of EGLE that the Purchaser's proposed installation and operation will not result in the unacceptable exposure to hazardous substances in groundwater or interfere with the ongoing implementation of response activities to address groundwater contamination in the vicinity.

Purchaser may not withdraw groundwater on Units 15, 16, 17 and 18 without the approval of EGLE. The aggregate amount of groundwater available to the owners of lots 15, 16, 17 and 18 is 150 gallons per minute. EGLE will need to review any proposed withdrawal of groundwater in order to keep the withdrawal under this approved limit.

Purchaser may not install any wells on Units 2 through 14 and Unit 19 and may not use the groundwater present in those units.

Unless permitted by the Restrictive Covenants or as may be modified by EGLE, there should be no contact with groundwater on the Property. All construction shall be slab on grade without habitable spaces below grade. Any building constructed on the Property shall be engineered, constructed, and maintained to prevent volatile emissions from hazardous substances in soil and/or groundwater from entering the structure.

Indoor air, groundwater and soils underlying buildings may require monitoring and/or management to assure compliance with applicable state and federal laws.

7. Acknowledgment of Restrictive Covenants and Consent Decree.

Purchaser acknowledges that it has received the Restrictive Covenants referred to Section 1 and agrees to abide by all of the Restrictive Covenants. The Property is also subject to a certain Consent Decree entered by the United States District Court for the Western District of Michigan on or about August 29, 2000, in *USA v Cordova Chemical Company of Michigan, et. al*, Case No. G89-10503-CA. Purchaser acknowledges having received a copy of the Consent Decree and shall at all times comply with the terms of the Consent Decree.

8. Agreement Not to Disturb Wells on Property.

There may be multiple water wells on the Property. These include abandoned production water wells and wells used by the EGLE/USEPA for environmental response activity. A transferee of any interest in any lot within the Property may not disturb any known water well without the express written permission of the EGLE and USEPA.

Dated: _____

By: _____
Jason Baerman

COUNTY OF MUSKEGON

Dated: _____

By: _____

Its: _____

ACKNOWLEDGMENT OF NOTICE OF CONSENT DECREE

Purchaser acknowledges that Seller has provided to Purchaser a notice of a consent decree entered by Judge Douglas W. Hillman of the United States District Court of the Western District of Michigan, dated August 29, 2000. The Consent Decree represents the settlement in Civil Action No. G89-10503-CA, *United States of America v. Cordova Chemical Company of Michigan, et. al.* The Consent Decree is filed with the Muskegon County Register of Deeds in Liber 3392, page 36.

Section V(c) of the Consent Decree requires that at least thirty (30) days prior to the conveyance of any interest in land in the Muskegon County Business Park - North, written notice of the Consent Decree must be provided to the Purchaser and written notice must be provided to USEPA and the State of Michigan of the proposed conveyance, including the name and address of the Purchaser, and the date on which this notice was provided to Purchaser.

Dated: _____

By: _____
Jason Baerman, Purchaser

**ACKNOWLEDGMENT OF RESTRICTIVE COVENANTS
AND THE COVENANTS AND AGREEMENT NOT TO SUE**

Purchaser acknowledges that Seller has provided to Purchaser copies of the recorded Restrictive Covenants and the Covenants and Agreement Not to Sue referenced in Section 1 of Addendum 1 to the Purchase and Sale Agreement between Muskegon County and Jason Baerman, or his affiliated assignee.

Dated: _____

By: _____
Jason Baerman, Purchaser

Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Matthew Farrar

Committee Date: 2022-01-13

Requesting Department: Public Works

Full Board Date: 2022-01-18

Budget: Non-Budgeted

Agenda Number: CDSP22/01 - 04

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to approve the sale of lot #7 in the County’s Business Park North for \$5,000 per acre for a total purchase price of \$20,000, to Dales’ Tree Service, LLC., and authorize the Chair to sign the purchase agreement and authorize the Administrator to sign all necessary documents related to closing and earmark the proceeds towards paving the Walton Street Parking lot.

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

Dales Tree Service, LLC is interested in purchasing lot #7 in the County’s Business Park North for \$5,000 per acre. Lot #7 has 4 acres for a total sale price of \$20,000.

To date, the County has closed lots 15, 16, 17, 18, & 19 all on Industrial Parkway, for \$5,000 per acre. Attached is a map showing the lots sold and closed, lot 11 proposed sale, lots currently listed with a realtor, and lot #7 proposed to be sold to Dale’s Tree Service, LLC.

The Board previously approved this sale for \$8,000 per acre. Staff requests this lot, like all other lots on Industrial Parkway, be sold for \$5,000 per acre which was the original understanding of the purchaser as verified by Counsel.

The remaining lots are as follows: 1, 2, 3, 4, 5, 6, 8, 9, 10, & 14.

Staff recommends acceptance of this offer and approval of a purchase agreement prepared by Corporate Counsel.

<p>Kristen Wade, HR Director Analysis Required? No</p>	<p>Finance Manager:</p> <p><input checked="" type="checkbox"/> </p>
<p>Michael Homier, Corporate Counsel Analysis Required? Yes</p>	<p>Mark Eisenbarth, County Administrator Recommendation:</p> <p><input checked="" type="checkbox"/> </p>

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is made as of the Effective Date by and between MUSKEGON COUNTY, MICHIGAN whose address is 990 Terrace Street, Muskegon, Michigan 49442 (“Seller”) and Dale’s Tree Service, LLC, a Michigan limited liability company, whose address is 3300 Holton Road, Twin Lakes, Michigan 49457 (“Purchaser”). Seller and Purchaser shall be collectively known as the “Parties” and individually known as a “Party.”

ARTICLE I PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, and Purchaser agrees to purchase, the following:

- (a) Those certain parcels of land situated in Dalton Township, Muskegon County, Michigan, more particularly described on **Exhibit A** within the Muskegon County Business Park-North, together with all rights and appurtenances pertaining to such property (the “Land”), and
- (b) Any buildings, structures, fixtures and other improvements on the Land, if any (the “Improvements”).

1.2 Property Defined. The Land and Improvements are referred to collectively as the “Property.”

1.3 Effective Date. This Agreement shall become effective on the date when the last of Seller and Purchaser has signed this Agreement, which date will be deemed the “Effective Date.”

1.4 Permitted Exceptions. The Property shall be conveyed subject to the matters which are, or are deemed to be, permitted exceptions pursuant to this Agreement (the “Permitted Exceptions”).

1.5 Purchase Price. Seller is to sell and Purchaser is to purchase the Property for a total of Eight Thousand Dollars (\$5,000) per acre (\$20,000 Total).

1.6 Payment of Purchase Price. The Purchase Price, as increased or decreased by prorations and adjustments, shall be payable in full at Closing in cash by wire transfer of immediately available federal funds.

1.7 Earnest Money.

- (a) Simultaneously with the delivery of this Agreement, Purchaser will deposit with Transnation Title Company of Michigan (the “Title Company”) the sum of One Thousand Dollars (\$1,000) (the “Earnest Money”) in good funds, either by cashier’s check or federal wire transfer. The Title Company shall hold the Earnest Money in an account. The Parties may execute an escrow agreement with the Title Company.
- (b) The Earnest Money is fully refundable to Purchaser during the ninety (90) day due diligence period (“Due Diligence Period”) which begins upon the Effective Date of this Agreement.

ARTICLE II TITLE AND SURVEY

2.1 Title Examination; Commitment for Title Insurance. Seller shall obtain a commitment to issue an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price (the "Title Commitment") covering the Property from the Title Company, showing all matters affecting title to the Property and binding the Title Company to issue at Closing an Owner's Policy of Title Insurance in the full amount of the Purchase Price, together with copies of all instruments referenced in the Title Commitment.

2.2 Survey. Purchaser may, at its sole cost and expense, obtain a new survey of the Property (the "Survey") no later than thirty (30) days after receipt of the Title Commitment.

2.3 Title Objections: Cure of Title Objections. Purchaser shall have until the thirtieth (30th) day following its receipt of the Title Commitment and any Survey it obtains to notify Seller, in writing, of such objections as Purchaser may have to anything contained in the Title Commitment. Any item contained in the Title Commitment or any matter shown on the Survey to which Purchaser does not timely object shall be deemed a Permitted Exception. If Purchaser timely notifies Seller of objections to title or to matters shown on the Survey, Seller shall have the right, but not the obligation, to cure such objections. Within ten (10) days after receipt of Purchaser's notice of objections, Seller shall notify Purchaser in writing whether Seller elects to attempt to cure such objections. If Seller elects to attempt to cure, and provided that Purchaser shall not have terminated this Agreement, Seller shall have until the date of Closing to attempt to remove, satisfy, or cure the objection. If Seller elects not to cure any objections specified in Purchaser's notice, or if Seller is unable to effect a cure prior to the Closing, Purchaser shall have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Purchaser which Seller is unwilling or unable to cure, and without reduction of the Purchase Price; or (ii) to terminate this Agreement by sending written notice to Seller within ten (10) days after receipt of Seller's election not to cure or the expiration of the period during which Seller is required to so notify Purchaser, as applicable, and upon delivery of such notice of termination, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser, and thereafter neither party shall have any further rights, obligations, or liabilities except to the extent that any right, obligation, or liability expressly survives termination of this Agreement. If, having commenced attempts to cure any objection, Seller later notifies Purchaser that Seller will be unable to effect a cure, Purchaser shall, within five (5) business days after such notice has been given, notify Seller in writing whether Purchaser shall elect to accept the conveyance under clause (i) or to terminate this Agreement under clause (ii).

2.4 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser a warranty deed to the Property to enable the Title Company to issue to Purchaser an ALTA Owner's Policy of Title Insurance (the "Title Policy") covering the Property, in the full amount of the Purchase Price, subject only to the Permitted Exceptions. Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) The lien of all real property taxes and assessments, water charges, sewer assessments, and each other lien or encumbrance of an indefinite or unascertainable amount not then delinquent or which are apportioned in accordance with the provisions of this Agreement.
- (b) Local, state and federal laws, ordinances or governmental regulations, including, but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property.
- (c) Items appearing of record or shown on the Survey not objected to by Purchaser or waived or deemed waived by Purchaser in accordance with Section 2.3.
- (d) Matters affecting the condition of title to the Property created by or with the written consent of Purchaser.
- (e) All other matters affecting title to the Property which are approved or waived by Purchaser as provided in this Agreement.

- (f) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 592. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant.
- (g) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 593. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant.
- (h) Declaration of Restrictive Covenant recorded with the Muskegon County Register of Deeds on August 10, 2015 in Liber 4062, Page 594. On and after the Closing Date, Purchaser shall comply with, and be bound by, all the provisions of such Declaration of Restrictive Covenant, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Restrictive Covenant. The Restrictive Covenants identified above are referred to as the "Restrictive Covenants".
- (i) Consent Decree entered on or about August 29, 2000 (the "Consent Decree") in *United States of America v Cordova Chemical Company of Michigan, et. al*, Case No. G89-10503-CA, United States District Court for the Western District of Michigan. Purchaser shall comply with, and be bound by, all the provisions of such Consent Decree, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Consent Decree.
- (j) Agreement and Covenants Not to Sue recorded with the Muskegon County Register of Deeds in Liber 3504, Page 720 on October 17, 2002 (the "Covenant Not to Sue"). Purchaser shall comply with, and be bound by, all the provisions of such Agreement and Covenants Not to Sue, and shall execute at or before Closing an Acknowledgment that it has received a copy of such Covenant Not to Sue.

**ARTICLE III
DUE DILIGENCE PERIOD**

3.1 Right of Inspection. During the Due Diligence Period, Purchaser shall have the right to make a physical inspection of the Property, to perform tests on the Property, and to examine such surveys, engineering reports, environmental audits, and similar materials in the possession or under the control of Seller or those obtained by Purchaser at its cost. All such due diligence work and/or entry upon the Property shall fully comply with the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue. Purchaser agrees that Seller is not making any representation or warranty as to the accuracy or completeness of any information and Seller shall have no liability with respect to any matters described therein or the failure of such materials to disclose any matters. Purchaser shall keep confidential all materials (together with any reports and materials prepared by or on behalf of Purchaser and other information obtained by Purchaser, in each case, with respect to the Property) in accordance with, and subject to, the terms and provisions of this Agreement. Prior to conducting any engineering, geotechnical, environmental, or other inspections or studies, Purchaser shall provide advance written notice of the intention and plans for such inspections or studies for Seller's approval, which shall not be unreasonably withheld. Seller also retains the right to be present at any such inspections or studies. If Seller does object to any intention or plan provided by Purchaser, Purchaser and Seller agree to negotiate in good faith to develop an alternative plan for such inspection or study.

Any such inspections and testing shall be performed by companies selected by Purchaser. If Purchaser obtains a Phase I environmental site assessment of the Property and such environmental site assessment recommends additional inspections or testing, Purchaser shall submit such report to Seller. Seller shall have the option to conduct the required inspections, at Seller's expense and present the results to Purchaser. If Seller does not exercise such option, Purchaser may conduct the inspections at its own cost. Purchaser agrees to repair any damage to the Property and to indemnify Seller against and hold Seller harmless from any claim for

liabilities, costs, expenses (including reasonable attorney fees), damages, or injuries arising out of or resulting from the inspection or testing of the Property by Purchaser or its consultants or agents, and notwithstanding anything to the contrary in this Agreement, such obligation to repair and to indemnify and hold harmless Seller shall survive Closing or any termination of this Agreement. Purchaser agrees that Purchaser enters the Property at its sole risk and waives all liability of Seller with respect to personal injury or damage except to the extent caused by Seller's gross negligence or intentional misconduct, provided, however, that this exception shall not in any way limit the protection of governmental immunity available to Seller. Purchaser shall maintain and shall ensure that Purchaser's consultants maintain public liability and property damage insurance in the amount of at least \$1,000,000.00, naming Seller as an additional insured party, and in form and substance adequate to insure against all liability of Purchaser and its consultants, and each of its agents, employees or contractors, arising out of the inspections or testing. Purchaser shall provide written notification, with a copy to Seller, to any licensed site remediation professional undertaking such inspections or testing on behalf of Purchaser's consultants, requiring that any and all reports or results of any and all inspections and studies of the Property shall remain confidential to the extent permitted by applicable law, and shall be released only to Purchaser and Seller and their authorized representatives or as otherwise required by the United States Environmental Protection Agency ("USEPA) and the Michigan Department of Environment, Great Lakes, and Energy ("EGLE"). All inspections and testing shall occur at reasonable times agreed upon by Seller and Purchaser and shall be conducted so as not to interfere unreasonably with the normal operation of the Property or with use of the Property by Seller or any occupants, and in compliance with the documents referenced in Section 2.4(f)-(j). Purchaser agrees to provide a copy of any and all reports or results of any and all inspections and studies of the Property within fifteen (15) calendar days of receipt by Purchaser if Seller requests same.

3.2 Due Diligence.

- (a) Seller may deliver to Purchaser copies of all tests, studies, surveys, title policies, and other substantive documents related to the Property, including zoning ordinances adopted and/or proposed related to uses for the Property, that are in Seller's possession or control (collectively "Seller's Documents"). Buyer is aware that USEPA and EGLE have many documents available regarding the Property.
- (b) Purchaser shall have the Due Diligence Period to inspect, or cause to be inspected, the physical condition of the Property, Seller's Documents, and other matters or conditions relevant to the Property. Any testing to determine the environmental condition of the Property shall be governed by Section 3.1 of this Agreement.
- (c) In the event that, after conducting the inspections referred to in this Agreement, Purchaser does not terminate this Agreement on or before expiration of the Due Diligence Period, Purchaser shall be deemed to have waived all objections with regard to the condition of the Property. If Purchaser timely terminates this Agreement, this Agreement shall terminate and Purchaser shall receive a return of the Earnest Money from the Title Company and each Party shall be relieved of any and all liability except for a provision that expressly survives the termination of this Agreement.
- (d) All inspections and tests performed on the Property by Purchaser or Purchaser's agents, employees, or contractors ("Purchaser's Agents") shall be conducted in compliance with all federal, state, and local laws, orders, regulations, and ordinances, and the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue.
- (e) Purchaser shall obtain any necessary approvals from USEPA and/or EGLE for Purchaser's proposed use by Closing – see Section 4.6(d).

3.3 Purchaser's Right of Termination. If Purchaser determines that the Property is not suitable for its purposes, Purchaser shall have the right to terminate this Agreement by giving written notice to Seller prior to the expiration of the Due Diligence Period. If Purchaser gives such notice of termination no later than the expiration of the Due Diligence Period, this Agreement shall terminate and the Earnest Money shall be returned

to Purchaser. If Purchaser fails to give Seller a notice of termination prior to the expiration of the Due Diligence Period, Purchaser shall no longer have any right to terminate this Agreement under this Section 3.3 and shall proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement. Time is of the essence with respect to the Parties' obligations and rights relating to such notice of termination.

3.4 USEPA and EGLE Controls. Purchaser acknowledges and understands that certain Units are controlled by the USEPA and/or EGLE for testing and other activities. This Agreement may also be subject to the approval of USEPA and EGLE prior to Closing.

ARTICLE IV CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall be held through the Title Company, as mutually agreed by the Parties, on a date mutually agreed to by Seller and Purchaser within a reasonable time, but in no event later than thirty (30) days from the expiration of the Due Diligence Period (the "Closing Date"). Time shall be of the essence with respect to the Closing Date. At Closing, Seller and Purchaser shall perform the obligations set forth in Section 4.2 and Section 4.3, the performance of which obligations shall be concurrent conditions.

4.2 Seller's Obligations at Closing. At Closing, Seller shall deliver the following to the Title Company:

- (a) A warranty deed in recordable form, conveying the Property, subject only to the Permitted Exceptions, executed by Seller (the "Deed");
- (b) The Deed shall specifically provide that it is subject to the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue, and that the Restrictive Covenants, Consent Decree and the Covenant Not to Sue are binding upon Purchaser and its successors, assigns, lessees, sublessees and any other occupant or user of all or any part of the Property;
- (c) A Seller's Affidavit of Title, executed by Seller in a form and condition reasonably acceptable to Seller;
- (d) A closing statement (the "Closing Statement") executed by Seller;
- (e) Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller;
- (f) An affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;
- (f) Any other filing required under applicable law in connection with the delivery of the Deed;
- (g) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement;

and to Purchaser: possession and occupancy of the Property, subject to the Permitted Exceptions.

4.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall deliver the following to Seller and the Title Company:

- (a) The full amount of the Purchase Price, as increased or decreased by prorations and adjustments as herein provided, in immediately available wire transferred funds pursuant to Section 1.5 above, it being agreed that at Closing, the Earnest Money shall be delivered to Seller and applied towards payment of the Purchase Price;
- (b) Such evidence as Seller's counsel or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser;
- (c) The Closing Statement executed by Purchaser;

- (d) Such other filings required under applicable law in connection with the delivery of the Deed;
- (e) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement or as are expressly set forth herein;
- (f) An executed agreement to be bound by, and to comply with, the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue; and
- (g) Executed documents referenced in Addendum 1 and notices provided to the appropriate authorities required of Purchaser pursuant to the Restrictive Covenants, the Consent Decree and the Covenant Not to Sue. See Addendum 1.

4.4 Credits and Prorations.

- (a) Real estate taxes shall be prorated between Purchaser and Seller as of the Closing Date, and Seller shall pay any and all real estate taxes affecting the Property for all years prior to the year in which the Closing occurs. Taxes for the year of Closing shall be prorated as of the date of Closing on a calendar year basis and shall be based on taxes due and payable in the calendar year of Closing.
- (b) Assessments, general or special, levied against the Property shall be assumed by Purchaser as of the Closing. Purchaser shall be entitled to rescind this Agreement at any time prior to the end of the Due Diligence Period, if it is not willing to accept responsibility for all existing assessments against the Property which it investigates during its Due Diligence Period.
- (c) The provisions of this Section 4.4 shall survive Closing.

4.5 Closing Costs. Seller shall pay (a) the fees of any counsel, accountants and other advisors representing it in connection with this transaction; (b) the fees for the Title Commitment; (c) one-half (1/2) of any escrow fee which may be charged by the Escrow Agent and Closing Agent; (d) the state and county documentary transfer taxes; and (e) the premium for the Title Policy.

Purchaser shall pay (a) all costs for any endorsements to the Title Policy; (b) the fees of any counsel, accountants and other advisors representing Purchaser in connection with this transaction; (c) the fees for recording the Deed conveying the Property to Purchaser; (d) the cost of the Survey; and (e) one-half (1/2) of any escrow fees which may be charged by the Escrow Agent and Closing Agent.

All other costs and expenses incidental to this transaction and the closing thereof shall be paid by the Party incurring same.

4.6 Conditions Precedent to Obligation of Purchaser. The obligation of Purchaser to consummate the transaction shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion upon written notice to the Seller:

- (a) Purchaser's review and acceptance of the existing assessments applicable to the Property prior to the expiration of the Due Diligence Period, as may be extended; and
- (b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of Closing; and
- (c) Obtaining any required approvals from USEPA and EGLE regarding Purchaser's proposed use of the Property. Purchaser shall diligently and in good faith pursue obtaining such approvals.

If any of the foregoing conditions are not fulfilled or waived by Purchaser by Closing, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser and neither party shall have any further liabilities or obligations under this Agreement except as otherwise expressly provided herein.

4.7 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

- (a) Seller shall have received the Purchase Price as adjusted pursuant to and payable in the manner provided for in this Agreement;
- (b) Purchaser shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement;
- (c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing;
- (d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing;
- (e) Seller shall receive satisfactory assurance that, in the event an Industrial Facilities Tax Exemption, or similar exemption is granted for real or personal property within the Park, Seller will be held harmless from any reduction in tax levied for Dalton Township purposes, unless Seller agrees otherwise; and
- (f) Consent, if required, to the sale from USEPA and EGLE.

If any of the foregoing conditions are not fulfilled or waived by Seller by Closing, this Agreement shall terminate, the Earnest Money shall be returned to Purchaser and neither Party shall have any further liabilities or obligations under this Agreement except as otherwise expressly provided herein.

ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Purchaser as of the Effective Date:

- (a) Seller is duly organized and is validly existing under the laws of the State of Michigan.
- (b) At Closing, subject to the approval of Seller's Board of Commissioners, Seller will have the full right and authority to enter into this Agreement and to transfer all of the Property to be conveyed by Seller and to consummate the transactions, subject to the consent of USEPA and EGLE.
- (c) At Closing, the persons signing this Agreement on behalf of Seller are authorized to do so.

5.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller:

- (a) Purchaser has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations and all requisite action necessary to authorize Purchaser to enter into this Agreement and to ensure its obligations have been, or by the Closing will have been, taken.
- (b) The person signing this Agreement on behalf of Purchaser is authorized to do so.
- (c) Purchaser is a limited liability company validly formed and in good standing with the State of Michigan.

**ARTICLE VI
DEFAULT**

- 6.1 Default by Purchaser. If Purchaser defaults for any reason other than Seller's default or the permitted termination of this Agreement by either Seller or Purchaser, Seller shall be entitled, as its sole remedy, to terminate this Agreement and retain the Earnest Money as liquidated damages for the breach of this Agreement.
- 6.2 Default by Seller. If the Closing does not occur by reason of default by Seller, Purchaser as its sole remedy shall be entitled to terminate this Agreement and receive a return of the Earnest Money.
- 6.3 Attorney Fees. If either Seller or Purchaser commences any litigation to determine or enforce any of the provisions of this Agreement, the prevailing Party in any such litigation is entitled to recover all of its reasonable costs and expenses (including reasonable attorney fees) from the non-prevailing party.
- 6.4 Survival. The provisions of this Article VI shall survive the termination of this Agreement.

**ARTICLE VII
RISK OF LOSS
NO PROVISION INCLUDED**

**ARTICLE VIII
COMMISSIONS**

- 8.1 Brokerage Commissions. Purchaser and Seller each represent and warrant to the other that they have not worked with any broker or agent in this transaction or if a Party has worked with a broker, that Party shall be solely responsible for any broker commission or fee.

**ARTICLE IX
DISCLAIMERS AND WAIVERS**

- 9.1 No Reliance on Documents. Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy, or completeness of any materials, data, or information delivered by Seller to Purchaser in connection with this transaction. All materials, data and information delivered by Seller to Purchaser in connection with the transaction are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser. Purchaser agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Purchaser shall be for general informational purposes only, (b) Purchaser shall not have any right to rely on any such report delivered by Seller to Purchaser, but, rather, will rely on its own inspections and investigations of the Property, and (c) neither Seller, any affiliate of Seller, nor the person or entity which prepared any such report delivered by Seller to Purchaser, shall have any liability to Purchaser for any inaccuracy in or omission from any such report.
- 9.2 Effect and Survival of Disclaimers. The compensation to be paid to Seller for the Property takes into account that the Property is being sold subject to the provisions of this Article IX. The provisions of this Article IX shall survive Closing.
- 9.3 Sale As Is. Without limiting the generality of any statements, Purchaser shall have a full right to inspect all aspects of the Property prior to Closing. Accordingly, by proceeding to Closing, the Purchaser agrees to accept the Property "as is" with all faults, and without any warranty with representation whatsoever as to the condition of the Property.

**ARTICLE X
MISCELLANEOUS**

10.1 Discharge of Obligations. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are specifically stated to survive Closing.

10.2 Assignment. Purchaser shall not assign this Agreement to any party without the written consent of Seller, which consent will not be unreasonably withheld.

10.3 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service, as of the date of first attempted delivery at the address. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller:

Muskegon County
Attn: Matthew Farrar
131 E. Apple Avenue
Muskegon, MI 49442

With Copy To:

Foster, Swift, Collins & Smith, PC
Attn: Scott H. Hogan
1700 E. Beltline Avenue NE, Suite 200
Grand Rapids, MI 49525

If to Purchaser:

Dale Ross
Dale's Tree Service, LLC
3300 Holton Road
Twin Lakes, MI 49457

10.4 Modifications. This Agreement may be modified only in writing signed by the Parties.

10.5 Successors and Assigns. This Agreement binds the permitted successors and assigns of the Parties.

10.6 Entire Agreement. This Agreement, including the exhibits, contains the entire agreement between the Parties pertaining to the subject matter and supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter.

10.7 Further Assurances. Each Party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other Party to consummate more effectively the purposes or subject matter of this Agreement. The provisions of this Section 10.7 shall survive Closing.

10.8 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same Agreement.

10.9 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.10 Applicable Law. This Agreement involves Property located in the State of Michigan and shall in all respects be governed by the laws of the United States and the laws of Michigan. Seller and Purchaser irrevocably submit to the jurisdiction of any state or federal court sitting in the state in which the Property is located in any action or proceeding arising out of or relating to this Agreement and irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state in which the Property is located. Purchaser and Seller agree that the provisions of this Section 10.10 shall survive the Closing of the transaction contemplated by this Agreement.

10.11 No Third-Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party (other than EGLE and USEPA) shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

- Exhibit A – Legal Description of the Land;
- Exhibit B – Permitted Exceptions; and
- Exhibit C – Addendum 1.

10.13 Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.14 Termination of Agreement. If either Purchaser or Seller terminates this Agreement pursuant to a right of termination, such termination shall operate to relieve Seller and Purchaser from all obligations under this Agreement, except for such obligations as are specifically stated to survive the termination of this Agreement.

10.15 Binding Effect. This Agreement shall not be binding upon the parties unless and until it has been approved by the Muskegon County Board of Commissioners.

10.16 Addendum. The Addendum attached as Exhibit C is incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

SELLER:
MUSKEGON COUNTY, MICHIGAN

Dated: _____, 2021

By: _____

Its: _____

PURCHASER:
DALE'S TREE SERVICE, LLC

Dated: _____, 2021

By: _____

Dale Ross

Its: Member

EXHIBIT A
LEGAL DESCRIPTION

Unit 7, Muskegon County Business Park-North, a Site Condominium according to the Master Deed recorded in Liber 3789, Page 441, First Amendment to Master Deed recorded in Liber 4274, Page 353, as amended, in the Office of the Muskegon County Register of Deeds, and designated as Muskegon County Condominium Subdivision Plan No. 182, together with rights in general common elements and limited common elements as set forth in said Master Deed, and amendments thereto, and as described in Act 59 of the Public Acts of 1978, as amended.

The tax parcel number listed below is provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

PPN 61-07-635-000-007-00

EXHIBIT B
PERMITTED EXCEPTIONS

TO BE SUPPLIED

EXHIBIT C

ADDENDUM 1 TO PURCHASE AND SALE AGREEMENT BETWEEN MUSKEGON COUNTY AND DALE'S TREE SERVICE, LLC

This Addendum supplements the Purchase and Sale Agreement between Muskegon County, as Seller, and Dale's Tree Service, LLC, as Purchaser. The Parties agree as follows:

1. Agreement and Covenants Not to Sue.

Purchaser acknowledges and represents that it has been given a full and complete copy of the Agreement and Covenants Not to Sue ("Covenant Not to Sue"), dated October 16, 2002, between Muskegon County, the U.S. Environmental Protection Agency ("USEPA"), and the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), including (without limitation) copies of the Restrictive Covenants that were incorporated as Exhibits 3, 4, and 5, to the Covenant Not to Sue. Those restrictive covenants have now been replaced by three Declarations of Restrictive Covenant recorded with the Muskegon County Register of Deeds in Liber 4062, page 592; Liber 4062, Page 593 and Liber 4062, Page 594 (the "Restrictive Covenants"). Purchaser acknowledges and represents that it has received and at Closing will execute the attached written **NOTICE**, as required by the Covenant Not to Sue, stating that the Property is subject to the Covenant Not to Sue. Purchaser hereby consents in writing to be bound by the terms of the Covenant Not to Sue including, but not limited to, the certification requirement in Section VII (Certification) of the Covenant Not to Sue. Purchaser shall be solely responsible for taking the actions required under Section XI, Paragraphs 29-32 (Parties Bound/Transfer of Covenant), of the Covenant Not to Sue, in order for Purchaser to receive the benefit of the USEPA's and EGLE's Covenant Not to Sue. The rights, benefits and obligations upon Seller under the Covenant Not to Sue may be assigned to Purchaser with the consent of USEPA and EGLE. The request for approval must be sent thirty (30) days before the Closing.

2. Valuation of Property and Disclosure to USEPA.

Thirty (30) days prior to the Closing, Seller may provide the USEPA a copy of the most recent property tax assessment or an independent appraisal of the Property, performed within sixty (60) days.

3. Notification to USEPA and EGLE.

- a. A copy of this Purchase Agreement shall be sent to the persons listed in Section XV of the Covenant Not to Sue.
- b. Purchaser shall ensure that each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to the Covenant Not to Sue. A copy of any such deed, title, or other instrument conveying an interest in the Property shall be sent by Purchaser to the persons listed in Section XV of the Covenant Not to Sue. This shall be the responsibility of Purchaser under this Addendum.

4. Access/Notice to Successors in Interest.

a. Commencing on the date that it acquires or leases any interest in the Property, Purchaser shall provide USEPA and EGLE, their authorized officers, employees, representatives, and all other persons performing Response Actions under USEPA or EGLE oversight, an irrevocable right of access at all reasonable times to the Property and to any adjacent property owned or controlled by Purchaser to which access is required for the implementation of Response Actions at the Property, and for the purposes of performing and overseeing Response Actions at the Site under federal and state law. Seller agrees to communicate promptly to Purchaser any notice received by Seller from EGLE or from the USEPA of the timing of Response Actions to be undertaken at the Property or any other Response Action at the Site that may affect use of the Property. In addition, and without limitation of the rights reserved in this paragraph, USEPA and the State of Michigan retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"), part 201 of the Michigan Natural Resources and Environmental Protection Act, MCLA 324.20101, *et seq.* ("Part 201"), and any other applicable statute or regulation, including any amendments thereto.

b. Purchaser shall ensure that assignees, purchasers, successors in interest, lessees, and sub-lessees of the Property shall provide the same access and cooperation as agreed to by Muskegon County in the Covenant Not to Sue. Purchaser shall ensure that a copy of the Covenant Not to Sue shall be provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with Sections V (Access/Notice to Successors in Interest) and XI (Parties Bound/Transfer of Covenant) of the Covenant Not to Sue.

5. Due Care/Cooperation with EGLE and USEPA.

Purchaser shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. Purchaser recognizes that the implementation of Response Actions at the Property may interfere with Purchaser's use of the Property, and may require closure of its operations, if any, or a part thereof. Purchaser agrees to cooperate fully with USEPA and EGLE in the implementation of Response Actions at the Property and further agrees not to interfere with the Response Actions. In the event that Purchaser becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threatened release. Purchaser shall also, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 20114 of Part 201, MCLA 324.20114, or any other law, immediately notify Seller, USEPA and EGLE of such release or threatened release.

6. Restrictions on Uses of Property.

Purchaser shall restrict the uses of the Property to those uses compatible with the Restrictive Covenants and with the industrial land use category or commercial subcategories II, III, or IV land use

as defined in Section 20120a(1) of Part 201 of the Michigan Natural Resources and Environmental Protection Act, as amended in June 1995, or other use that is consistent with the assumptions and basis for the cleanup criteria established pursuant to Section 10120a(l)(g).

Purchaser may withdraw groundwater on Unit 1 to a maximum aggregate withdrawal rate of 150 gallons per minute or less, unless prior to installation, Purchaser makes a demonstration to the satisfaction of EGLE that the Purchaser's proposed installation and operation will not result in the unacceptable exposure to hazardous substances in groundwater or interfere with the ongoing implementation of response activities to address groundwater contamination in the vicinity.

Purchaser may not withdraw groundwater on Units 15, 16, 17 and 18 without the approval of EGLE. The aggregate amount of groundwater available to the owners of lots 15, 16, 17 and 18 is 150 gallons per minute. EGLE will need to review any proposed withdrawal of groundwater in order to keep the withdrawal under this approved limit.

Purchaser may not install any wells on Units 2 through 14 and Unit 19 and may not use the groundwater present in those units.

Unless permitted by the Restrictive Covenants or as may be modified by EGLE, there should be no contact with groundwater on the Property. All construction shall be slab on grade without habitable spaces below grade. Any building constructed on the Property shall be engineered, constructed, and maintained to prevent volatile emissions from hazardous substances in soil and/or groundwater from entering the structure.

Indoor air, groundwater and soils underlying buildings may require monitoring and/or management to assure compliance with applicable state and federal laws.

7. Acknowledgment of Restrictive Covenants and Consent Decree.

Purchaser acknowledges that it has received the Restrictive Covenants referred to Section 1 and agrees to abide by all of the Restrictive Covenants. The Property is also subject to a certain Consent Decree entered by the United States District Court for the Western District of Michigan on or about August 29, 2000, in *USA v Cordova Chemical Company of Michigan, et. al*, Case No. G89-10503-CA. Purchaser acknowledges having received a copy of the Consent Decree and shall at all times comply with the terms of the Consent Decree.

8. Agreement Not to Disturb Wells on Property.

There may be multiple water wells on the Property. These include abandoned production water wells and wells used by the EGLE/USEPA for environmental response activity. A transferee of any interest in any lot within the Property may not disturb any known water well without the express written permission of the EGLE and USEPA.

Dale's Tree Service, LLC

Dated: _____

By: _____

Its: _____

County of Muskegon

Dated: _____

By: _____

Its: _____

ACKNOWLEDGMENT OF NOTICE OF CONSENT DECREE

Purchaser acknowledges that Seller has provided to Purchaser a notice of a consent decree entered by Judge Douglas W. Hillman of the United States District Court of the Western District of Michigan, dated August 29, 2000. The Consent Decree represents the settlement in Civil Action No. G89-10503-CA, *United States of America v. Cordova Chemical Company of Michigan, et. al.* The Consent Decree is filed with the Muskegon County Register of Deeds in Liber 3392, page 36.

Section V(c) of the Consent Decree requires that at least thirty (30) days prior to the conveyance of any interest in land in the Muskegon County Business Park - North, written notice of the Consent Decree must be provided to the grantee and written notice must be provided to USEPA and the State of Michigan of the proposed conveyance, including the name and address of the grantee, and the date on which this notice was provided to Purchaser.

Dale's Tree Service, LLC

Dated: _____

By: _____

Its: _____

**ACKNOWLEDGMENT OF RESTRICTIVE COVENANTS
AND THE COVENANTS AND AGREEMENT NOT TO SUE**

Purchaser acknowledges that Seller has provided to Purchaser copies of the recorded Restrictive Covenants and the Covenants and Agreement Not to Sue referenced in Section 1 of Addendum 1 to the Purchase and Sale Agreement between Muskegon County and Dale's Tree Service, LLC.

Dale's Tree Service, LLC

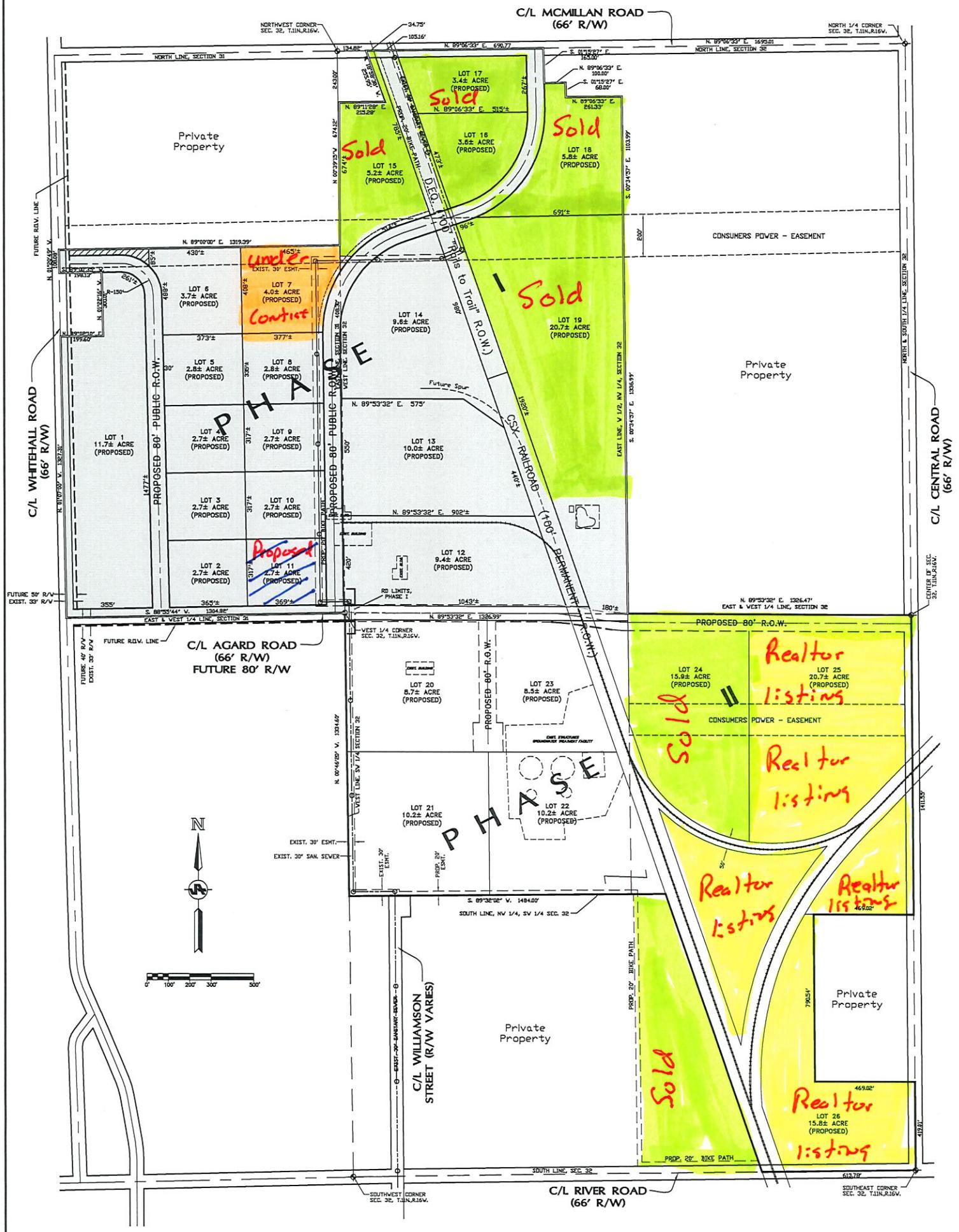
Dated: _____

By: _____

Its: _____

86083:00012:5870154-1

MUSKEGON COUNTY BUSINESS PARK – NORTH



-General Common Area

PRELIMINARY

REVISIONS	MARK	DESCRIPTION	DATE
R-1		REV LOT LAYOUT	11/27/06
R-2		REV ROAD LAYOUT	11/29/06

Johnson & Anderson, Inc.
CONSULTING ENGINEERS
2085 HILTON ROAD
MUSKEGON, MICHIGAN 49445
(231) 744-2487 (231) 744-8722 (FAX)

MUSKEGON COUNTY DPW
590 Terrace Street
Muskegon, Michigan 49442
(231) 724-6411

MUSKEGON COUNTY
BUSINESS/INDUSTRIAL PARK – DALTON
CONCEPTUAL DESIGN

VERT. SCALE:	HORIZ. SCALE:
JOB NO. 15941-00	DATE ISSUED 01/23/03
SHEET NO. 1	

Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Robert M. Lukens

Committee Date: 2022-01-13

Requesting Department: Community Development
- Parks

Full Board Date: 2022-01-18

Budget: Non-Budgeted

Agenda Number: CDSP22/01 - 05

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to increase the pay scale of Muskegon County Parks seasonal Park Ranger/Dock Security (16 positions), T22311 from pay table/grade TS-00305, \$11.00/hr - \$11.50/hr to TS-00310, \$13.00/hr - \$13.50/hr, and Park Crew Leaders (2 positions), T20001 and T20002, from pay table/grade TS-00330, \$12.75/hr - \$13.25/hr to TS-00335, \$14.75hr - \$15.25/hr.

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

This motion seeks to raise the hourly pay for Parks Department seasonal employees by \$2.00 per hour for all positions.

With the onset of the pandemic in March 2020, it has been increasingly difficult to find seasonal employees for the Muskegon County Parks system. Current hourly pay for seasonal park employees is:

- Rangers/Dock Crew (16) \$11.00, \$11.25 and \$11.50
- Crew Leaders (2) \$12.75, \$13.00 and \$13.25

Total budgetary impact would be \$41,568.85 if all seasonal positions are filled. This item was not included in the FY22 budget, but will be offset by the park fee increases from December 2021.

<p>Kristen Wade, HR Director Analysis Required? Yes</p> 	<p>Finance Manager:</p> <input checked="" type="checkbox"/> 
<p>Michael Homier, Corporate Counsel Analysis Required? No</p>	<p>Mark Eisenbarth, County Administrator Recommendation:</p> <input checked="" type="checkbox"/> 

Muskegon County Community Development / Strategic Planning Committee

Request for Board Approval

Requestor: Robert M. Lukens

Committee Date: 2022-01-13

Requesting Department: Community Development
- Parks

Full Board Date: 2022-01-18

Budget: Budgeted

Agenda Number: CDSP22/01 - 06

Suggested Motion: *(State the following exactly as it should appear in the minutes.)*

Move to approve the Community Project Fund Agreement between the Community Foundation for Muskegon, the County of Muskegon and the Land Conservancy of West Michigan to benefit Dune Harbor Park, and to authorize the County Administrator to provide disbursement approvals for expenditures under \$25,000 for Dune Harbor Park project (payment costs, and/or reimbursements).

Summary of Request: *(General description of financing, other operational impact, possible alternatives.)*

The Land Conservancy of West Michigan, along with the Community Foundation for Muskegon County, have been collaborating with Muskegon County on the Nugent Sand/Dune Harbor Park project since its inception.

The Land Conservancy developed a fundraising campaign to open Dune Harbor Park, and working with donors, has raised approximately \$500,000 for the park to be used for visitor amenities. The Land Conservancy of West Michigan plans to transfer that funding to an account to be set up at the Community Foundation for Muskegon County.

This motion seeks to establish the “Dune Harbor Park Fund,” and will allow the Parks Department to disperse funds for the opening of the park. For project requests and disbursements over \$25,000, Board Approval will be necessary; for disbursements under \$25,000, approval from the County Administrator and Community Development Director will be required.

<p>Kristen Wade, HR Director Analysis Required? No</p>	<p>Finance Manager:</p> <p><input type="checkbox"/></p> 
<p>Michael Homier, Corporate Counsel Analysis Required? Yes</p>	<p>Mark Eisenbarth, County Administrator Recommendation:</p> <p><input type="checkbox"/></p> 

**COMMUNITY FOUNDATION for MUSKEGON COUNTY
COMMUNITY PROJECT FUND AGREEMENT**

Dune Harbor Park Fund

THIS AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2022, by and between the Community Foundation for Muskegon County, a Michigan nonprofit corporation with tax exempt status as a public charity (the "**Community Foundation**"), and the Land Conservancy of West Michigan and the County of Muskegon (together, "**Client**").

The Community Foundation agrees to accept gifts and other deposits designated for the **Dune Harbor Park Fund** (the "Fund"). The purpose of the Fund is to support the opening of Dune Harbor Park for public access and may provide ongoing support.

The Community Foundation shall provide the Client the services outlined in Schedule A, for the fees described. Either party may terminate this agreement upon 60 days written notice to the other party. Absent such notice, this Agreement will remain in force until December 31, 2026. If both the Client and the Community Foundation desire to do so, this Agreement may be renewed on or before December 31, 2026, and annually thereafter.

The Client agrees to provide the Community Foundation with any and all records and data necessary for the Community Foundation to provide the Client with the services set forth. Further, the Client warrants that such records and data provided shall be accurate and true and the Foundation may rely on such records and data in fulfilling its obligations hereunder. Further, the Client shall cooperate in any audit of the Community Foundation for which information related to the services provided hereunder is requested by the Community Foundation's auditors. The Client agrees to provide the Community Foundation with any and all information needed to fulfill the Community Foundation's obligations hereunder on such forms and in such format as may be requested by the Community Foundation.

This Agreement and its Schedule contain the entire understanding of the parties and shall not be supplemented with any other term or condition unless such term or condition is in writing and specifically incorporated by amendment to this agreement.

The Community Foundation accepts the property transferred to it by the Client and its contributors and agrees to hold, administer and distribute it as provided in this document.

Land Conservancy of West Michigan

By: 

Kim Karn, Executive Director

County of Muskegon

By: _____
Mark Eisenbarth, County Administrator

Community Foundation for Muskegon County

By: _____
Todd M. Jacobs, President/CEO

SCHEDULE A

- A minimum deposit of \$500 is required to open the Fund and a balance of \$500 must be maintained unless the Client requests to close the Fund.
- The Community Foundation agrees to provide tax receipts to individuals or organizations that make gifts to the Fund. Gift solicitations by the Client must be in accordance with the Community Foundation's Donor Initiated Fundraising Policy.
- The Community Foundation agrees to maintain a database of the donors and will provide online access to the Client.
- The Community Foundation will invest the gifts in a money market account and/or certificates of deposit and will add the interest earned to the Fund.
- The Community Foundation agrees to make disbursements from the Fund to qualified 501(c)(3) organizations, schools, or units of government. Disbursements of \$25,000 or over will require the receipt of a written request from the Muskegon County Board of Commissioners, including minutes of the meeting authorizing the disbursement. Disbursements of less than \$25,000 will require the receipt of a written request including authorized signatures from the County Administrator and Community Development Director and, for Land Conservancy of West Michigan informational purposes, a detail listing of the individual expenditures making up the total request.
- If the balance of the Fund falls below the minimum, the Community Foundation may choose to pay out the balance to the Client or other qualified organization and close the Fund.
- Any disbursements from the Fund must be for the stated purpose of the Fund. The Community Foundation reserves the right to withhold a disbursement from the Fund if it is not for the stated purpose cited above. Any material change in the scope or scale of the purpose of the Fund, or changes in the purposes for which funds are spent, must be approved in writing by the Community Foundation before implementation.
- Each calendar year, the Community Foundation will charge an administrative fee of 2% of any amounts received in that year, with a minimum fee level of \$500. In the year the Fund is created, the minimum administrative fee level of \$500 will be prorated based on the number of months remaining in the calendar year. The fee structure may periodically be evaluated and adjusted.
- The Client will hold harmless and indemnify the Community Foundation against any and all liability, suits, claims, actions, losses, or damage arising out of any acts or omissions of any third party or of Client in relation to this Agreement, including, without limitation, expenses, judgments, fines settlements and other amounts actually and reasonably incurred by the Community Foundation. These indemnification rights provided to the Community Foundation will continue even if the Fund is terminated.