



SPECIAL MEETING OF THE BUCHANAN CITY COMMISSION

MONDAY, JULY 29, 2024 – 4:00 PM

CHAMBER OF BUCHANAN CITY HALL - 302 N REDBUD TRAIL, BUCHANAN MI

AGENDA

THE COMMISSION OF THE CITY OF BUCHANAN, in compliance with Michigan’s Open Meetings Act, hereby gives notice of a special meeting of the Buchanan City Commission to be held in the Chamber of City Hall.

* Requests to be added to the agenda as a “Scheduled Matter from the Floor” should be submitted in writing to the City Clerk at least 5 business days prior to the scheduled meeting during which the speaker wishes to appear, and the approval of such requests remain within the discretion of the Mayor. If denied, the speaker may nonetheless speak during the “non-agenda items only” public comments section of the agenda.

* Those who are unable to appear during a meeting but who still wish to share public comment may submit such comments in written form to the City Clerk at least 4 hours in advance of the meeting.

* Individuals with disabilities may request necessary reasonable accommodations by submitting requests to the City Clerk, preferably at least 24 hours in advance.

* Written requests and comments may be submitted to the City Clerk either in person or via mail to Buchanan City Hall, 302 N. Redbud Trail, Buchanan, MI 49107, or via email to clerk@cityofbuchanan.com

I. Call to Order

II. Roll Call

III. Public Comment - Agenda Items Only (3-minute limit)

IV. New Business

A. LiveBuchanan- Items being considered were postponed at the Regular Meeting held on July 22, 2024. The Commission has directed the City Clerk to call a special meeting to discuss and consider the postponed items.

1) Consideration and discussion of the proposed agreement by and among the City of Buchanan and LiveBuchanan to provide Economic Development, Historic Preservation, and Promotion of Downtown Buchanan.

2) Consideration and discussion of the proposed Resolution 2024.07/21 LiveBuchanan Support.

B. USDA- Consideration to authorize City Manager Timothy J. Lynch to execute construction contracts and documents relating to Downtown Infrastructure Contract No. 1 with Kamminga & Roodvoets, Inc.

V. Public Comment - Non-Agenda Items Only (3-minute limit)

VI. Adjourn

AGREEMENT BY AND AMONG THE CITY OF BUCHANAN AND LIVEBUCHANAN TO PROVIDE ECONOMIC DEVELOPMENT, HISTORIC PRESERVATION, AND PROMOTION OF DOWNTOWN BUCHANAN

THIS AGREEMENT, made and entered into this __ day of _____, 2024 by and among the **City of Buchanan**, 302 N Red Bud Tr Buchanan, MI 49107, (hereinafter the “City”), the **Buchanan Development Organization DBA LiveBuchanan**, P.O. Box 108 Buchanan, MI 49107 (hereinafter “LiveBuchanan”).

WITNESSETH

WHEREAS, LiveBuchanan is a Michigan nonprofit corporation created to, among other things, achieve a vibrant, strong and viable downtown; preserve downtown buildings and their historic integrity; and lessen the financial burdens on the City of Buchanan government, and these activities are directly related to the City of Buchanan's strategic goals; and

WHEREAS, the parties hereto mutually desire to create a contracted public-private Agreement, to promote and further the accomplishment of their mutual objectives.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

- 1. **TERM.** The term of this Agreement shall be from the date first written above through June 30, 2029. After June 30, 2029, it is the intention of the parties that this Agreement shall automatically renew on an annual basis unless terminated by either party as provided herein.
- 2. **SERVICES.** LiveBuchanan shall coordinate and administer all projects, programs, and events that in the sole opinion and strategic vision of LiveBuchanan, fulfill its goals to foster economic development and the revitalization of downtown Buchanan using the Main Street Four Points Approach.
- 3. **FISCAL SUSTAINABILITY.** It is the intention of the parties that LiveBuchanan shall be, in the long run, fiscally self-sustaining through grants, donations, fundraising, and other forms of revenue. However, the City and LiveBuchanan acknowledge that LiveBuchanan will not initially be self-sustaining and shall need fiscal assistance in the near term.
- 4. **BUDGET.** During the term of this agreement, LiveBuchanan shall annually submit a list of projects and overall budget based on the contract for services agreed upon by the City and LiveBuchanan.
 - a) The budget shall be submitted for consideration and approval by the City no later than the fifteenth (30th) day of May of each year.

b) It is the intention of the parties that, during the term of the Agreement, the City will pay LiveBuchanan an annual amount that will provide a balanced budget for LiveBuchanan. The annual payments from the City shall be determined during the budgeting process, but the parties project the following annual amounts as of the date of this Agreement:

2024-2025:	\$ 50,000
2025-2026:	\$ 50,000
2026-2027:	\$ 50,000
2027-2028:	\$ 50,000
2028-2029:	\$ 50,000

c) To assist with the fiscal sustainability of LiveBuchanan, it is the intention of the parties that following the end of the contracted period, the City will pay LiveBuchanan no less than \$50,000 annually as in-kind support of the downtown for activities, events, aesthetics, etc., based on the budgetary needs of the LiveBuchanan.

d) The City agrees to support LiveBuchanan in obtaining Michigan Main Street training, classes, meetings, and professional development at a rate of \$6,000 per year.

e) LiveBuchanan shall seek sponsorships and other contributions (e.g. fundraising events, grants and donations) to assist with its own organizational expenses as well as for LiveBuchanan contributions towards events and community development projects. Any funds received by LiveBuchanan from grants, donations, fundraising, or other independent sources shall remain the property of LiveBuchanan.

5. **PAYMENT FOR SERVICES.** Payment for LiveBuchanan’s services shall be payable in advance, with funds being available and paid from the City budget to cover LiveBuchanan services and projects July 1 and December 1 of each fiscal year (Or the following Monday should these dates fall on a weekend). Half of the year’s agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

6. **TRANSITION OF EMPLOYEES.** The Assistant Director of Community Development/Main Street Manager (LiveBuchanan Executive Director) shall remain at all times a full-time, paid position with the City, and the Community Development Director shall also assist LiveBuchanan with its responsibilities for services provided to the City.

7. **USE OF OFFICE SPACE.** The City shall provide sufficient office space in the City Hall building located at 302 N Red Bud Tr Buchanan, MI 49107 for LiveBuchanan to carry out the services contemplated by this Agreement at no charge to LiveBuchanan.

8. **COOPERATION AND REPORTING.** It is intended that a “high level of communication” between LiveBuchanan and the City of Buchanan shall include the following:

a) LiveBuchanan shall submit to the City an annual report including for the length of time that a contract for services exists between the length and the City. LiveBuchanan will provide financial reports to the City for only those services outlined in the contract.

b) The City shall notify LiveBuchanan of any and all proposed projects in the downtown area, so that LiveBuchanan has the opportunity to provide input or collaborate in their implementation.

9. **MAIN STREET MODEL.** LiveBuchanan is committed to the National Main Street model as its organizational structure and has achieved the Engaged Level Main Street designation. Parties acknowledge that LiveBuchanan will continue to operate under the National Main Street model and maintain certification. Annually, each Team will adopt specific work programs with measurable tasks, and undertake activities designed to implement the National Main Street approach.

10. **FINANCIAL ACCOUNTABILITY.** LiveBuchanan at its own expense shall annually engage a Certified Public Accountant to review all of its financial activities in order to promptly file IRS Form 990 and to create an annual financial summary for LiveBuchanan consisting at minimum of an annual Income Statement and a Balance Sheet. Furthermore, the City at its own expense for the term of this Agreement shall have the right to annually audit the books and records associated with the revenues and the expenditures of funds for the programs, projects, and services specified in this Agreement

11. **INSURANCE REQUIREMENTS.** LiveBuchanan, at LiveBuchanan’s own cost and expense, shall procure and maintain, for the duration of this Agreement, insurance policies with

Comprehensive General Liability	\$2,000,000
Excess Umbrella Liability	\$1,000,000
Automobile Liability (non-owned & hired)	\$1,000,000
Worker’s Compensation/Employer’s Liability	\$500,000
Directors & Officers	\$1,000,000

the following minimum insurance coverages and limits:

Prior to the City payment for Services under this Agreement, LiveBuchanan shall furnish the City with proof of such insurance, and the policy(s) will require a 30-day notice of cancellation to be given to the City while this Agreement is in effect. These policies will be in effect at the time LiveBuchanan commences work under this Agreement. The City shall be named as an endorsed additional insured according to its interest under the general liability policy during the term of this Agreement.

12. **PARTIES RESPONSIBLE FOR OWN AGENTS.** The parties to this Agreement are responsible for the actions or inactions of their respective officers, directors, employees, and agents. No party shall be responsible for the actions or inaction of another party’s officers, directors, employees or agents.

13. **INDEPENDENT CONTRACTOR STATUS.** It is understood and agreed that LiveBuchanan, in the performance of the Services to be performed pursuant to this Agreement, shall act as and be an independent contractor and shall not act as an agent or employee of City.

a) None of the employees or agents of LiveBuchanan shall be considered employees or

agents of the City. LiveBuchanan and its agents shall obtain no retirement benefits or other benefits that accrue to the City’s employees and LiveBuchanan hereby expressly waives any claim it may have to any such rights, with the exception of the LiveBuchanan Director per Paragraph 6.

b) Nothing in this Agreement shall create or be construed as creating a partnership, joint venture or any other relationship between the City and LiveBuchanan other than an independent contractor relationship.

14. TERMINATION OF AGREEMENT. Either party may terminate this Agreement at any time.

a) The City may terminate this Agreement at any time by giving LiveBuchanan sixty (60) days prior written notice of termination. LiveBuchanan may also terminate this Agreement at any time by giving the City sixty (60) days prior written notice of termination. Termination by any party shall be effective on the 61st day after the date of such written notice.

b) If the City terminates this agreement without cause, the City shall, on or before the 61st day after the date of written notice, pay to LiveBuchanan those remaining funds which were payable in the fiscal year in which notice was given. Additionally, regardless of cause, if the City terminates this agreement, the City shall agree to pay the contract amount for the next fiscal year, including any grant commitments. Half of the year’s agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

For the second fiscal year following contract termination, the City agrees to pay the contract amount to LiveBuchanan, not including grant funds. Half of the year’s agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

c) Upon termination for cause, any unspent funds paid to LiveBuchanan by the City pursuant to this Agreement shall be refunded to the City after the costs of dissolution and wind up of LiveBuchanan. All other unspent funds shall remain the property of LiveBuchanan or benefit another non-profit organization within Berrien County in accordance with the Articles of Incorporation of LiveBuchanan.

d) “Cause” pursuant to this section is defined as limited to, embezzlement, criminal activity, or a material breach of the terms of this agreement.:

- i. a material breach of the terms of this agreement; or
- ii. illegal activity by a director, employee, or agent of LiveBuchanan related to the performance of this Agreement, such as fraud, embezzlement, or misuse of public funds.

15. NOTICES. All notices herein required shall be in writing and shall be sent by certified mail, postage prepaid, addressed as follows:

LiveBuchanan
P.O. Box 108
Buchanan, MI 49107
Attn: President

City of Buchanan
302 N Red Bud Tr
Buchanan, MI 49107
Attn: City Clerk

16. CONFORMANCE TO APPLICABLE LAWS. LiveBuchanan shall comply with all applicable federal, state, and local laws, rules and ordinances. No discrimination shall be made by LiveBuchanan in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, sex or gender identity, religion, marital status, sexual orientation, height, weight or disability of such person.

17. DISPUTE RESOLUTION. Any dispute arising out of this Agreement shall first be referred to the City Manager and the LiveBuchanan Director, and/or their delegees. In the event that the dispute is not satisfactorily resolved, either party may commence arbitration proceedings pursuant to the Uniform Arbitration Act, with each party appointing an arbitrator and those arbitrators selecting a neutral arbitrator. Any arbitration award shall be enforceable in a court of competent jurisdiction.

18. SOLE AND ONLY AGREEMENT. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which is not embodied in the Agreement and no other agreement, statement or promise shall be valid or binding.

19. INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

20. AMENDMENT. No change, amendment or modification of the Agreement shall be valid unless the same be in writing and signed by the parties hereto.

21. CITY ASSISTANCE. City staff and commission will cooperate with and support, to the extent feasible, LiveBuchanan in the promotion of the Main Street Program including without limitation its applications for grant funding and awards. City’s agreement of cooperation and support under this paragraph carries no additional financial commitment by the City; rather it is a statement of general support of the Main Street Program and its efforts consistent with the provisions of this Agreement.

22. AGREEMENT BINDING ON SUCCESSORS. The terms of this Agreement shall be binding upon the successors of the parties.

(signatures on next page)

IN WITNESS WHEREOF, the parties hereto have on the dates set hereunto set their hands and seals as duly authorized by their respective board of directors.

WITNESSES:

CITY OF BUCHANAN

By: _____
Mayor

Dated: _____

WITNESSES:

BUCHANAN DEVELOPMENT
ORGANIZATION DBA LIVEBUCHANAN

By: _____
President of the Board of Directors

Dated: _____

APPROVED AS TO FORM:

By: _____

City Attorney

**CITY OF BUCHANAN
BERRIEN COUNTY, MICHIGAN
RESOLUTION 2024.07/21**

WHEREAS, in order to operate a tax-exempt private entity, the Articles of Incorporation and Bylaws have been officially filed by the State of Michigan for the Buchanan Development Organization (LiveBuchanan) and

WHEREAS, LiveBuchanan has obtained the IRS 501(c)(3) charitable tax-exempt designation to best carry out its mission and work; and

WHEREAS, LiveBuchanan will continue its mission as a volunteer-led organization focused on creating a vibrant, strong, and economically viable downtown using the Main Street Four Point Approach to further their commitment to historic preservation, infrastructure improvements, quality events, supporting small businesses through retention and recruitment, and promoting downtown Buchanan as the heart and hub of the community.

WHEREAS, LiveBuchanan will promote Buchanan’s historic preservation, contribute to community betterment by fostering economic development downtown, holding community events, fundraising for specific projects, social programs, improvement and beautification; and

WHEREAS, LiveBuchanan will disseminate information and promote interest in the preservation, history, arts and culture, architecture and public use of the Buchanan downtown area; and

NOW, THEREFORE, BE IT RESOLVED that the proposed community vitality efforts, consistent with the City’s vision for downtown be executed by a partnership between the City and LiveBuchanan to implement a shared vision to benefit the community at large via economic development and revitalization of the downtown.

BE IT FURTHER RESOLVED that the City of Buchanan fully supports LiveBuchanan both financially and through the implementation of projects/programming that create a vibrant, strong, and economically viable downtown.

AYES:

NAYES:

ABSENT:

ADOPTED, APPROVED, AND PASSED BY THE City of Buchanan on this the ___ day of _____, 2024.

CITY CLERK, KALLA LANGSTON

CERTIFICATION

I hereby certify that the above is true and complete copy of a RESOLUTION adopted by the City Commission of the City of Buchanan, County of Berrien, State of Michigan, at a regular meeting held on _____ day of _____, 2024 and that said meeting was conducted.

CITY CLERK, KALLA LANGSTON