

CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 27, 2012

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
 - A. Recognition JAAR Partnerships Participation in the "GOOD BUDDY BUCKS" Program. PUBLIC SAFETY
 - B. Recognition of Fall 2012 Citizen's Academy Graduates. PUBLIC SAFETY
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. State of Michigan Resource Management Fees. PUBLIC WORKS/WATER FILTRATION
 - C. Moratorium on Fees for 2013 Vacant Buildings. PLANNING & ECONOMIC DEVELOPMENT
 - D. Extension of Vinyl Siding Supplier and Installer Contract for Fiscal Year 2012. COMMUNITY & NEIGHBORHOOD SERVICES
 - E. To Impose a Ten-Year Limit on Applying for Priority Housing Repairs and Approve Clerical Changes to Citizen Participation Plan. COMMUNITY & NEIGHBORHOOD SERVICES
 - F. Rezoning Request for the Property Located at 137 E. Laketon Avenue. PLANNING & ECONOMIC DEVELOPMENT
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:

❑ **NEW BUSINESS:**

A. Temporary Employment Services Provider RFP. AFFIRMATIVE ACTION

B. Former Central Fire Station – Purchase Agreement Between the City of Muskegon and Parkland Muskegon. PLANNING & ECONOMIC DEVELOPMENT

❑ **ANY OTHER BUSINESS:**

❑ **PUBLIC PARTICIPATION:**

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

❑ **CLOSED SESSION:**

❑ **ADJOURNMENT:**

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

Date: November 27, 2012
To: Honorable Mayor and City Commissioners
From: Director Jeffrey Lewis
**RE: Recognition JAAR Partnerships participation in the
“GOOD BUDDY BUCKS” program**

SUMMARY OF REQUEST:

RESOLUTION
RECOGNITION OF JAAR PARTNERSHIPS PARTICIPATION IN THE
“GOOD BUDDY BUCKS” PROGRAM

WHEREAS, the Muskegon Police Department and the City Commission recognizes the importance of building good character in our youth today in order to positively impact the future for everyone and;

WHEREAS, it is the desire of the Muskegon Police Department and Muskegon City Commission to build positive mentoring relationships between law enforcement and youth and;

WHEREAS, it is our belief that the more positive mentoring situations we can place youth in, the less likely they will be to turn to negative influences and activities.

NOW, THEREFORE, BE IT RESOLVED, that the Muskegon City Commission hereby recognizes and thanks **JAAR Partnerships** for its participation in the successful “Good Buddy Bucks” program which rewards youth for displaying “Good Character” and allows youth to positively interact with law enforcement.

Given on behalf of the Muskegon City Commission this 27th day of November, 2012.

Stephen Gawron, Mayor

STAFF RECOMMENDATION:
Approve - Director Jeffrey Lewis



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Given on behalf of the Muskegon City Commission this 27th day of November, 2012.

Stephen Gawron, Mayor

Date: November 27, 2012

To: Honorable Mayor and City Commissioners

From: Director Jeffrey Lewis

RE: Recognition of Fall 2012 Citizen's Academy Graduates

SUMMARY OF REQUEST:

RESOLUTION
RECOGNITION OF FALL 2012 CITIZEN'S ACADEMY GRADUATES

WHEREAS, the City Commission desires to provide citizens with a better understanding of the functions of law enforcement, dispelling misconceptions and increasing positive communication between citizens and police; and

WHEREAS, it is the desire of the Muskegon City Commission to encourage cooperation between the public and law enforcement to positively impact our communities;

NOW, THEREFORE, BE IT RESOLVED, that the Muskegon City Commission hereby congratulates and recognizes:

Deborah Betts
Brenda Cowherd
Christina DeGroat
Steven Fink
Michelle Janusiewicz
Julia Koch

Tammy Lauber
Lea Markowski
Barry Parker
Elizabeth Parker
Wendell Wickland
Roger Willcutt

for their faithful attendance, completion and graduation from the 10 week
Fall 2012 Citizen's Police Academy

Given on behalf of the Muskegon City Commission this 27th day of November, 2012.

Stephen Gawron, Mayor

STAFF RECOMMENDATION:

Approve - Director Jeffrey Lewis



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Given on behalf of the Muskegon City Commission this 27th day of November, 2012.

Stephen Gawron, Mayor

Date: November 27, 2012
To: Honorable Mayor and City Commissioners
From: Ann Marie Cummings, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the November 13th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 13, 2012

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, November 13, 2012.

Mayor Gawron opened the meeting with a prayer from Reverend Bill Freeman from the Harbor Unitarian Universalist Congregation after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Sue Wierengo, Byron Turnquist, Lea Markowski, Eric Hood, and Willie German, City Manager Bryon Mazade, City Attorney John Schrier, and Deputy City Clerk Linda Potter.

2012-83 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the October 23rd City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Poverty Exemption Guidelines for Board of Review. FINANCE

SUMMARY OF REQUEST: Due to recent court decisions and policy changes by the State Tax Commission, the County Equalization Department has requested the City amend its Board of Review Poverty Exemption Guidelines.

The *Resolution to Adopt Poverty Exemption Income Guidelines and Asset Test* has been prepared to meet these new standards.

FINANCIAL IMPACT: The revised guidelines provide clarification to the Board of Review in the granting of poverty-based tax exemptions.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the poverty guideline resolution as

requested by the County Equalization Department.

C. SCADA Computer Upgrade Proposal for Water Filtration Plant. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to enter into an agreement with Tetra Tech 710 Avis Drive, Ann Arbor, MI for SCADA programming and the purchase of Dell computers for a total cost of \$44,000.

FINANCIAL IMPACT: \$44,000.

BUDGET ACTION REQUIRED: None at this time but future budget re-forecasting may be considered.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Tetra Tech for SCADA programming and to purchase Dell replacement computer equipment for a total expense of \$44,000.

D. Deficit Elimination Plan for Home Rehabilitation Fund and State Grants Fund. FINANCE

SUMMARY OF REQUEST: At June 30, 2012, the City of Muskegon Home Rehabilitation Fund had a deficit balance of \$182,501 and the State Grants Fund had a deficit unassigned balance of \$8,781. Act 275 of the Public Acts of 1980 requires that the City file a Deficit Elimination Plan with the Michigan Department of Treasury. Staff is requesting adoption of the Home Rehabilitation Fund and State Grants Fund Deficit Elimination Plan Resolutions.

FINANCIAL IMPACT: As presented by the Deficit Elimination Plan, the Home Rehabilitation Fund and State Grants Fund will no longer have a deficit by June 30, 2014.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adoption of the Deficit Elimination Plan Resolutions.

E. Union Contract Agreement – Service Employees International Union (SEIU), Local 517M (Clerical). CITY MANAGER

SUMMARY OF REQUEST: To approve an agreement with SEIU, Local 517M (Clerical) to extend their union contract for one year (through December 31, 2013) under the same terms (no salary increase) and conditions.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the agreement to extend the union contract with SEIU, Local 517M and authorize the Mayor and Clerk to execute it.

F. Union Contract Agreement – Service Employees International Union (SEIU), Local 517M Unit 2. CITY MANAGER

SUMMARY OF REQUEST: To approve an agreement with SEIU, Local 517M, Unit 2

to extend their union contract for one year (through December 31, 2013) under the same terms (no salary increase) and conditions.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the agreement to extend the union contract with SEIU, Local 517M and authorize the Mayor and Clerk to execute it.

Motion by Commissioner Wierengo, second by Commissioner German to accept the Consent Agenda as presented.

ROLL VOTE: Ayes: Markowski, Gawron, Hood, Spataro, German, Wierengo, and Turnquist

Nays: None

MOTION PASSES

2012-84 PUBLIC HEARINGS:

A. Request for an Industrial Facilities Exemption Certificate – Graphics House. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Graphics House Sports Promotions, Inc., has requested the issuance of an Industrial Facilities Tax Exemption Certificate. The company will be investing \$154,722 in real property and \$111,437 in personal property. The investment is expected to create three jobs. This qualifies them for a tax abatement of six years on personal property and 12 years on real property.

FINANCIAL IMPACT: The City will capture certain additional property taxes generated by the expansion.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate for a term of six years for personal property and twelve years for real property.

The Public Hearing opened to hear and consider any comments from the public. Mr. Brent McKinnon, 444 Irwin, representing Graphics House, explained the request.

Motion by Vice Mayor Spataro, second by Commissioner Wierengo to close the Public Hearing and approve the request for an Industrial Facilities Exemption Certificate for a term of six years for personal property and twelve years for real property for Graphics House.

ROLL VOTE: Ayes: Hood, Spataro, German, Wierengo, Turnquist, Markowski, and Gawron

Nays: None

MOTION PASSES

2012-85 NEW BUSINESS:

A. Transmittal of 6/30/12 Comprehensive Annual Financial Report.
FINANCE

SUMMARY OF REQUEST: The City's *June 30, 2012 Comprehensive Annual Financial Report* (CAFR) has previously been distributed to City Commissioners via both email and hard copy. The CAFR is also available on the City's website at www.shorelinecity.com. At this time the CAFR is being formally transmitted to the Commission in accordance with state law. The CAFR has been prepared in accordance with GASB accounting standards. The CAFR also includes the single-audit of federal grants received by the City.

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

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Acceptance of the CAFR for the period ended June 30, 2012.

Motion by Vice Mayor Spataro, second by Commissioner Hood to accept the CAFR for the period ended June 30, 2012.

ROLL VOTE: Ayes: German, Wierengo, Turnquist, Markowski, Gawron, Hood, and Spataro

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments received.

ADJOURNMENT: The City Commission Meeting adjourned at 7:07 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Date: November 27, 2012
To: Mayor and City Commission
From: Department of Public Works – Water Filtration Plant
RE: State of Michigan Resource Management Fees

SUMMARY OF REQUEST:

Staff is requesting commission to authorize payment to Michigan Department of Environmental Quality \$9,994.43 for State of Michigan Resource Management Fees.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To authorize payment to the state of Michigan for \$9,994.43 used to cover the Michigan Public Water Supply fee.

Date: November 8, 2012
To: M. AL-SHATEL, DIRECTOR
From: Department of Public Works –Water Filtration
RE: State of Michigan Resource Management Fees

Request for approval to pay the State of Michigan, Michigan Public Water Supply fee. The fee is to cover the state expense to help the system owners/operators to comply with the complex new federal regulations. The fee schedule is part of the Safe Drinking Water Act, 1976, P.A. 399 as amended. This is a budget line item 591-60558-5346 for \$7,500.00. The fee schedule is set to \$9,994.43 this year.

Please see table below.

Michigan Department of Environmental Quality
RESOURCE MANAGEMENT
Office of Drinking Water & Municipal Assistance



INVOICE

Issued under authority of Public Act 399 of 1976 as Amended
Failure to submit payment by the date due will result in a penalty as prescribed by law.
Community Public Water Supply Annual Fee

Page 1

C0016138 Ref No: 04570

CITY OF MUSKEGON
KUHN, ROBERT
1350 EAST KEATING
MUSKEGON, MI 49442

Invoice Number: 774899
Invoice Date: October 30, 2012
Payment Due: November 30, 2012

CITY OF MUSKEGON
KUHN, ROBERT
1350 EAST KEATING
MUSKEGON, MI 49442

PAY ONLINE, visit <https://www.thepayplace.com/mi/deq/comm>
NEW OPTION TO PAY BY CREDIT OR DEBIT CARD (as well as e-check)

Invoice Item	Quantity	Unit Cost	Total Cost
WSSN: 04570; MUSKEGON	1	\$9,994.43	\$9,994.43

Payment Due: November 30, 2012

Total:	\$9,994.43
Tax:	\$0.00
Total Invoice:	\$9,994.43

Account Number _____
Work Order No. _____
Description _____
Date _____ Initials _____

RECEIVED

NOV 2 2012

D.P.W.

PAY ONLINE, visit <https://www.thepayplace.com/mi/deq/comm>

MAKE CHECK OR MONEY ORDER PAYABLE TO: **STATE OF MICHIGAN**

TO ENSURE PROPER CREDIT, SEND THIS PORTION WITH PAYMENT TO:

Michigan Department of Environmental Quality

Cashiers Office - COMM

PO Box 30657

LANSING, MI 48909-8157

(Please note or make any mailing corrections below)

CITY OF MUSKEGON

~~KUHN, ROBERT~~ *mohammed Al-Shatel*

1350 EAST KEATING

MUSKEGON, MI 49442

C0016138 Ref No: 04570

INVOICE NO:
774899

RMD

COMM

For Cashier's Use Only:

**Fee Schedule
Community Water Systems**

The Safe Drinking Water Act, 1976, P.A. 399 as amended, requires an annual fee for each community water system based on the following classifications:

Fee Schedule 2013 Community Water Supply Program	
Population Served	Fiscal Year 2013 Fee
More than 500,000	\$128,851.08
100,001-500,000	\$26,754.30
50,001-100,000	\$16,913.64
25,001-50,000	\$9,994.43
10,001-25,000	\$5,381.20
5,001-10,000	\$2,921.45
1,001-5,000	\$1,230.09
401-1,000	\$768.82
101-400	\$615.04
25-100	\$384.40

PENALTY: After November 30, 2012, a penalty of 9 percent per annum on the unpaid balance is applied to the amount due. This invoice does not reflect any prior outstanding balances and/or late fees.

ANNUAL FEE ADJUSTMENT: The fee is adjusted annually based on the Detroit Consumer Price Index (CPI). Last year's rate was 0.4 percent.

CREDIT ADJUSTMENT: At the end of the fiscal year, 75 percent of unspent fee revenue from previous annual fee payments is applied as a credit on a pro rata basis to the fee the following year. As there was no unspent fee revenue in fiscal year 2012, there is no credit for fiscal year 2013.

NOTE:

- New this year is the ability to make this payment with a credit or debit card as well as e-check. Visit our website at: <https://www.thepayplace.com/mi/deq/comm>
- If paying by check, please return the portion of the invoice indicated to receive proper credit.
- A written explanation is required to effect any change in the amount due.
- All changes to the amount due are subject to verification.

Any questions about invoices for community water systems please call (517) 241-1268.

QUESTIONS AND ANSWERS TO EXPLAIN MICHIGAN PUBLIC WATER SUPPLY ANNUAL FEES

What is the authorization for this fee?

Public Act 165 was signed into law on September 16, 1993, and took immediate effect. The bill amended Michigan's Safe Drinking Water Act, 1976 PA 399, as amended.

Who is required to pay this annual fee?

There are over 11,500 community and noncommunity public water supplies serving an estimated 50 million visitors and residents each year. The community systems are those serving cities, towns, villages, mobile home parks, apartments, etc. with at least 15 service connections or 25 or more year round residents. Noncommunity public water systems include facilities such as schools, campgrounds, restaurants, businesses, parks, motels, highway rest stops, etc. with their own well, serving an average of 25 or more persons per day, at least 60 days per year.

How much is the 2013 fee?

The fees for community systems are based on population served, and range from \$384.40 to \$128,851.08. Noncommunity fees are divided into two categories. Facilities with wells serving primarily a transient population such as campgrounds, rest stops, motels, and restaurants are classified as transient noncommunity water supplies. Their annual fee is \$130.69. Nontransient noncommunity water systems (schools and businesses) serve the same 25 or more persons (students/employees) on a routine basis, at least six months per year. The nontransient annual fee is \$553.53 per year. Requirements for nontransient systems are much more complex than for transient systems demanding a higher level of regulatory support to attain compliance. Note: The annual fee DOES NOT include the costs for water sample analysis.

Why a fee?

Recent amendments to the Federal Safe Drinking Water Act have significantly increased inspection and sampling requirements for public water supplies nationwide. Michigan maintains a primacy agreement with the United States Environmental Protection Agency (USEPA). This means the state retains authority to implement the public water supply program in lieu of the federal government as long as it enacts rules that are at least as stringent as the federal rules. The public water supply program includes periodic inspection of water systems, monitoring the quality of drinking water served to the public, certification of laboratories for drinking water analysis, maintenance of a state drinking water laboratory, certification of water treatment plant operators, technical consultation, permitting and construction plan review, and training. The fees are required to enable the state to implement the new federal regulations for public water supplies.

Why is it better for Michigan to manage the public water program as opposed to the USEPA?

Retaining state and local control of the program is advantageous for several reasons. The federal rules allow states to reduce or waive a significant number of requirements based on inspections, historical data, and assessments of a system's vulnerability to contamination. A federally administered program would not be structured toward reduced monitoring and would require all systems to routinely sample for all regulated contaminants. In addition, the state program focuses on public health services including technical assistance, education, and training to ensure a safe and reliable public water supply and to prevent waterborne disease outbreaks. The state program strives to help system owners/operators comply with the complex new federal regulations. A federally administered program typically would use a strict enforcement oriented approach to gain compliance.

What if there are mistakes on the invoice?

If information is incorrect, you should correct it, and return the corrected invoice with the proper payment. If the error involves a change in the invoice amount, the information necessary to recalculate the fee is provided. A written explanation for the correction must be provided, signed by an authorized representative, and submitted with the appropriate payment. Always retain a copy of the invoice for your records.

What happens if the fee is not paid?

The Safe Drinking Water Act contains penalties for late payment (after November 30 of each year) calculated as 9 percent per annum for community systems and \$25.00 per month or portion thereof for noncommunity systems. The Department of Treasury collects all penalties.

Commission Meeting Date: November 27, 2012

Date: November 14, 2012
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: Moratorium on fees for 2013 Vacant Buildings

SUMMARY OF REQUEST: Request to approve a moratorium on fees charged to owners of vacant buildings that are entering their fifth year billing cycle in 2013. Eligibility requirements for the moratorium of fees charged are proposed to remain the same as the 2012. Moratoriums would be determined based on the criteria included on the attached Vacant Building Registration Moratorium (this remains unchanged from last year).

FINANCIAL IMPACT: Exact amount unknown but should be minimal.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of a fee moratorium for vacant building invoices meeting the approved criteria.

COMMITTEE RECOMMENDATION: None

Vacant Building Registration Moratorium on 5th year fees.

A proposed billing moratorium could be initiated for the year of 2013, impacting all structures that are about to enter their fourth vacant building billing cycle. This moratorium would apply only to structures that meet certain criteria to insure that the structure is being properly maintained and the owners are current on all their responsibilities to the various city departments.

The criteria staff feels a vacant building would have to meet to qualify for a moratorium of fee are:

1. All taxes & fees, such as mowing charges, vacant building registration, landlord registrations, business registrations and any other applicable fees, must be fully paid and current.
2. All city supplied utilities for the property must be fully paid.
3. There were no more than 2 environmental letters sent to the address with no work being performed at the address in the vacancy years in question.
4. The building owner can demonstrate that they have made recent investments in the vacant building during the vacancy period or in the case of a building in good condition, they have continued to provide the necessary financial support for the building to be in usable and move-in condition.
5. The property has been listed during the vacancy period and is still currently listed for sale with a professional realty firm.

Due to the complexities of the overall program, city staff would utilize our current appeal process to administer the moratorium and the owners that feel they qualify would be required to apply for the moratorium after being billed. To make the public aware of this opportunity, we would have to mail a notice to each qualified owner informing them of the moratorium and its requirements to qualify. If the owner felt they could meet the criteria, they would apply with supporting documentation, if they do not meet the criteria we would hope they would not apply for it and consume staff time with the reviews.

Because of the criteria that must be met and the large number of structures that we will be billing, staff would not be able to review all the invoices prior to billing. We simply do not know if all of the structures can meet the criteria and we do not have the staff to make those determinations in advance.

Using the appeal process, staff can make the determination by requiring the owner to provide some of the above listed information and this will cut down on staff time spent. Even so, this will substantially increase the amount of time staff must spend processing paperwork for this program.

Commission Meeting Date:

November 27, 2012

Date: **November 19, 2012**

To: **Honorable Mayor and City Commission**

From: **Community and Neighborhood Services Department**

Re: **Extension of Vinyl Siding Supplier and Installer
Contracts for Fiscal Year 2012**

SUMMARY OF REQUEST: To authorize the Community and Neighborhood Services Department to extend the contract through June 30, 2013 to Keene Lumber, located at 346 W. Laketon Avenue, Muskegon, MI, for the balance of 2012 Fiscal year.

To authorize Community and Neighborhood Services to extend the contract through June 30, 2013 to Mark N. Tucker, LLC, 9121 Holton Road, Holton, MI, to install vinyl siding for the balance of 2012 Fiscal year.

FINANCIAL IMPACT: Funding will be disbursed from the 2012 Community Development Block Grant Vinyl Siding fund.

BUDGET ACTION REQUIRED: FY 2012 Balance remaining:
\$45,749.

STAFF RECOMMENDATION: To approve request.

COMMITTEE RECOMMENDATION: The funding for the Vinyl Siding Program was approved by the Commission during the 2011 – 2012 allocation period, which would end November 2012; our request is to extend this agreement until 6/30/13.

Commission Meeting Date: November 27, 2012

Date: November 19, 2012

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department ^{dm}

Re: To Impose a 10 Year Limit on Applying for Priority Housing Repairs and Approve Clerical Changes to Citizen Participation Plan

SUMMARY OF REQUEST: To authorize Community and Neighborhood Services to impose a 10 year limit on applying for a Priority Housing Repair project and Vinyl Siding being a one-time activity. In addition, approve the clerical changes to the Citizen Participation Plan per CDC approval.

FINANCIAL IMPACT: This will stretch our CDBG Funding for the Priority Housing Repair program to include families with housing needs.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve request.

COMMITTEE RECOMMENDATION: The proposal has already been approved by the Citizen's District Council at their November 8, 2012 meeting.

City of Muskegon Citizen Participation Plan Amended 11-08-2012

The City of Muskegon understands the importance of having citizen involvement during and after the planning and implementation of its Community Development activities.

As a representative of the community the citizenry bring hands on knowledge of the concerns and needs of the community and its citizens that staff may not be aware of or not realize the importance of.

The City of Muskegon fully understands that there is a strong correlation between a successful CDBG/HOME program and the degree of citizen input in the planning and allocation process

Citizen Participation Plan Objectives

The City of Muskegon encourages participation of its citizens, especially those residents who are extremely low, very low, low and moderate income. Citizens are also encouraged to participate who reside in high minority concentrated neighborhoods, who are non-English speaking or speak limited English. Residents are also encouraged to participate that are involved in the housing area whether it be as a realtor, builder, housing advocate, nonprofit or for profit developers or residents of Public Housing and or other types of assisted housing residents. All residents involved in the public service area are also encouraged to participate.

- A. The City will provide citizens with reasonable and timely access to all of its committee meeting.
- B. The City will offer technical assistance from the City's CNS Department to residents and eligible nonprofit in developing proposals, conducting research, etc.
- C. The City's CNS department will respond to all formal complaints submitted to the CNS department in writing within 15 days of receipt with a written response.
- D. If and when notified the City will supply assistance to residents with mobility problems, hearing and visual impediments that wish to participate in the City meetings concerning its CDBG/HOME activities and process and or any other related meeting.
- E. The City will consult with local Public Housing authorities when developing any studies related to housing development, neighborhood revitalization (i.e. Consolidated Plan, Action Plan, CAPER, etc.) in order so that the local Public Housing Authority can submit any related information to be included in the plan and make the information available to their tenants and or board members.

Citizen's District Council

The City of Muskegon Community Development Block Grant Citizen's District Council is composed of nine (9) Citizens: four (4) representing each of the four wards, three (3) from at large; two (2) Citizens representing the targeted area (all voting members); plus one member from the City commission and one member of City staff (both non-voting).

All members are appointed by the City Commission and their terms are for three (3) years.

The purpose of the Citizen's District Council (CDC) is to act as an advisory board to the City Commission on all matters dealing with the U.S. Department of Housing and Urban Development programs concerning the City of Muskegon and its citizenry.

All CDC meetings are open to the public and are subject to the Michigan Open Meeting Act, Public Act 276 of 1976 as amended (MCL Section 15.261 et seq.)

Scope of Participation

- The Citizen District Council will be involved in an advisory capacity in reviewing the proposed annual Consolidated Plan, any amendments to the existing CDBG/HOME program, and the Annual Consolidated Plan Performance Reports, prior to the scheduled Public Hearing.
- The Citizen's District Council (CDC) will be briefed on the status and performance of the programs during its regular meetings, in order that members may provide meaningful input to assess the effectiveness of the program activities in addressing the 1990 National Affordable Housing Act (NAHA) and the CDBG National objectives. CDC minutes will be included in the annual Consolidated Plan Performance Report.

- **Access for Information and Records**

As part of the City of Muskegon Consolidated Planning Process, the City will make available to citizens, public agencies, non-profits and other interested parties the following information.

- The total amount of funding the City anticipates receiving from the U.S. Department of Housing and Urban Development each fiscal year.
- The type of activities that will be undertaken with that particular fiscal year's funding.
- The estimated amount of funding which will be committed to activities benefiting low and moderate-income residence.

Amendments and/or Modifications

The City will follow 24CFR 91.505 when making amendments or modifications to the Consolidated plan, Action Plan or Citizen Participation Plan. An amendment to the Consolidated Plan or Action Plan will be necessary when one of the following occurs.

1. A change occurs in the City's allocation priorities or a change in the method of distribution of funds.
2. It is necessary to change the purpose, scope, location or beneficiaries of an activity.
3. An activity is to be carried out using funds from any program covered by the Consolidated Plan but not previously described in the Action Plan.

Criteria for Substantial Amendment

The City of Muskegon considers an item to be a substantial amendment that significantly affects the scope of services, purposes or beneficiaries of a project or in combination with other changes that are greater than 10% of the year's fiscal CDBG or HOME entitlement amount in question.

Any amendments to the Consolidated Plan will be advertised in the City's major newspaper "the Muskegon Chronicle" allowing the citizenry 30 days to comment on the amendment(s). The City will review all comments concerning the changes written or oral. A summary of the comments and views along with any required replies will be attached to the amendments of the plan.

Period for Citizen Comments

A formal comment period of 30 days will be provided for all Consolidated Plans, Annual Action Plans, Citizens Participation Plan. In the case of Environmental Reviews and Request for Release of Funds activities the City will comply with CFR 24 58.45.

In all circumstances a summary of the plan, performance report, or substantial amendment, or other relevant documentation will be published at the beginning of the formal comment periods. The summary will clearly express the period that comments will be accepted, as well as the procedure for making comments.

Written comments received during the comment period along with oral comments made during Public Hearings will be considered. A summary of such comments by citizens, public agencies, and other interested parties will be attached to the relevant Plan, substantial amendment or performance report or related document. In a situation where it is not favorable incorporated the comments will be included in the summary of comments along with an explanation of why it was not possible to incorporate the comments.

Public Hearings

- The City of Muskegon will hold at least two (2) Public Hearings per year during regular City Commission meetings in order to obtain comments and suggestions of citizens on the proposed activities and or complaints.
- The City of Muskegon Community and Neighborhood Services department will publish a notice of public hearings in the Muskegon Chronicle ten (10) days prior to the Public Hearing date. The notice will include date, time, place, procedure of the hearing and topics to be considered.

Availability and Accessibility to Documents during Public Comment Periods

The City of Muskegon will have the document available for public comment at the following locations for public review:

- Community and Neighborhood Services office, City Hall, 933 Terrace St. 2nd Floor
- City of Muskegon City Clerk's office, City Hall, 933 Terrace St. 1st Floor
- Hackley Public Library, Research Section, 316 W. Webster Ave
- Muskegon Housing Commission, 1823 Commerce

Anti-Displacement Policy

The City of Muskegon has attempted to avoid to all extent feasible the involuntary permanent displacement of persons as a result of federally assisted projects. No displacement is anticipated to occur as a result from current or projected community development or housing activities to be undertaken by the City. If conditions occur which trigger displacement, as defined by applicable Federal regulations, the City will provide all advisory services and financial assistance in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 and Section 104(d) of the Housing and Community Development Act of 1987, as amended. The City will take the necessary steps to ensure its Subrecipients or CHDO's and agents are aware of the necessity of avoiding displacement and that they are also aware of their responsibility should displacement occur in connection with any of the activities they administer.

Commission Meeting Date: November 27, 2012

Date: November 20, 2012
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Rezoning request for the property located at 137 E. Laketon Ave.

SUMMARY OF REQUEST:

Request to rezone the property at 137 E Laketon Ave from B-2, Convenience and Comparison Business District to B-4, General Business District, by Jack Kennedy.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their 11/15 meeting.

Planning Commission packet excerpt:

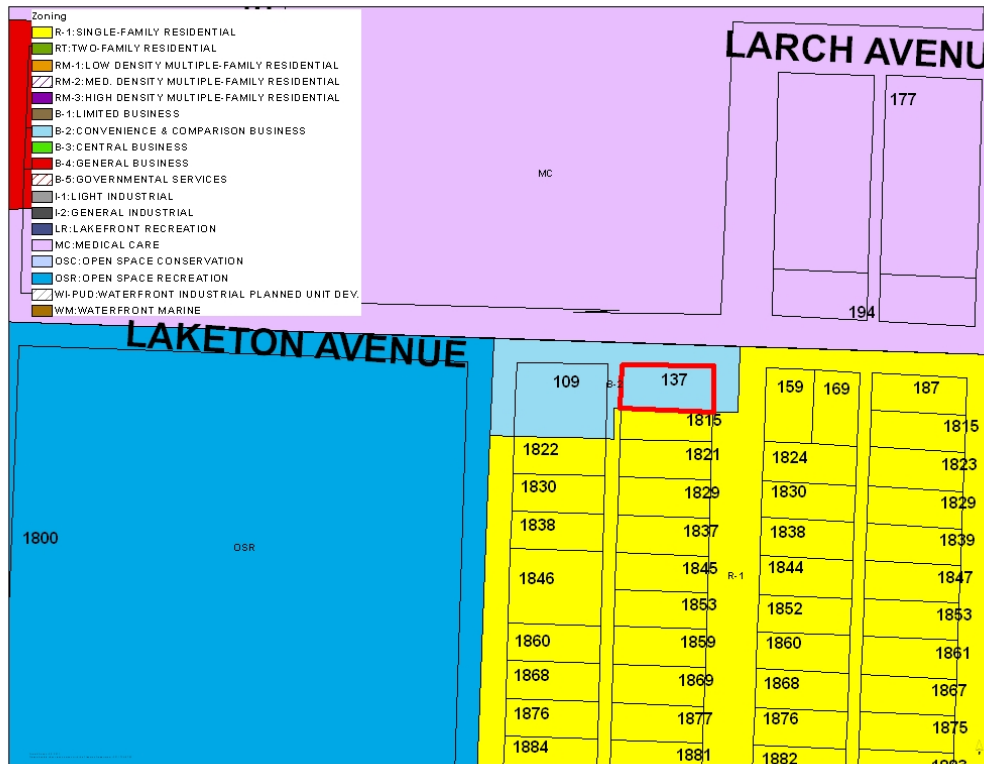
BACKGROUND

1. The applicant will be purchasing 109 and 137 E Laketon Ave. Both properties are zoned B-2, Convenience and Comparison Business District. He would like to rezone the property at 137 E Laketon Ave to B-4 General Business district so that it may be used for a funeral home. There currently any plans for the building at 109 E Laketon Ave.
2. The property at 137 E Laketon Ave was last used as a physical therapy office. Before that, it was used as a funeral home.
3. This case is only for the rezoning of the property to B-4, General Business District. If approved, the property would be allowed to all of the uses in that district, which includes funeral homes. However, because it will be a change of use from office to funeral home, it will require a minor site plan review from staff. Parking may become an issue during the review. Funeral homes require one parking space for every 25 sqft of usable floor area of chapels and assembly rooms. The building measures roughly 2,900 sqft. The applicant has stated that the two properties will share parking and will be able to have 32 parking spaces.
4. The hospital is located to the north of the property. Residential is to the east and south. Marsh field is located to the west of 1009 E Laketon Ave.
5. A notice letter was sent to all properties within 300 feet of this property. Staff has received one message in opposition of the rezoning from Maria Avila, owner of 1847 Hoyt. She would not like a funeral home that close to her house.

137 E Laketon Ave looking east



Zoning Map



Aerial Map



CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend the zoning map of the City to provide for a zone change for a property from B-2, Convenience and Comparison Business District to B-4, General Business District.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for the following described property from B-2, Convenience and Comparison Business District to B-4, General Business District.

CITY OF MUSKEGON PLAT A MUSKEGON HTS LOT 1 & N 10 FT LOT 2 BLK 4

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Cummings, MMC
City Clerk

CERTIFICATE (Rezoning of 137 E Laketon Ave from B-2 to B-4)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 27th day of November, 2012, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2008, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2012.

Ann Cummings, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on November 27, 2012, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for the property from B-2, Convenience and Comparison Business District to B-4, General Business District:

CITY OF MUSKEGON PLAT A MUSKEGON HTS LOT 1 & N 10 FT LOT 2 BLK 4

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2012

CITY OF MUSKEGON

By _____
Ann Cummings, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

TO: Honorable Mayor and City Commissioners
FROM: Dwana Thompson, Affirmative Action and Risk Management Director
DATE: November 16, 2012
RE: Temporary Employment Services Provider RFP

SUMMARY OF REQUEST:

Approval to allow staff to negotiate the 2013-2015 temporary employment services provider contract with the lowest responsible bidder, Elwood Staffing Services, contingent upon working out agreement terms acceptable to the City Manager and City Attorney.

RFP solicitation resulted in four proposals, due on October 30, 2012 at 2:00 p.m.
Proposals were received from:

P.I.E. Management, LLC; 120 North Washington Square, Suite 805, Lansing, MI 48933
Elwood Staffing Services, 230 North River, Suite B, Holland, MI 49424
Phoenix Personnel, 1910 E. Apple Avenue, Muskegon, MI 49442
Trillium Staffing Solutions, 1478 E. Ellis Road, Norton Shores, MI 49444

A committee consisting of managers and users reviewed proposals, listened to presentations, and interviewed the following two lowest bids:

P.I.E. Management, LLC. While the low bidder, P.I.E. Management, LLC has no presence in West Michigan, and lacks the experience filling many of the needed positions listed in the RFP. The company did not provide adequate verification that their insurance company would not deny any of the positions at the rates he quoted, and did not follow up with staff regarding said questions.

Elwood Staffing Services (formerly Beacon Staffing) has been the City's temporary services provider for the past four years. The company has established an excellent working relationship with City staff and has provided exceptional service throughout their contract in terms of flexibility, responsiveness, hiring, orientation process, reporting, and commitment to equal employment opportunity. Elwood remains fully prepared to handle all of the City's temporary employment staffing needs except the optional position of part-time police officer.

FINANCIAL IMPACT:

The 2013 projected temporary staffing services cost is approximately \$875,000.

BUDGET ACTION REQUIRED:

The 2013 budget allowed for the financial resources.

COMMITTEE RECOMMENDATION:

The committee unanimously recommends granting approval to negotiate the 2013-2015 temporary employment staffing services contract with Elwood Staffing Services.

STAFF RECOMMENDATION:

Staff recommends and requests approval to negotiate the 2013-2015 temporary employment staffing services contract with the lowest responsible bidder, Elwood Staffing Services, contingent upon working out agreement terms acceptable to the City Manager and City Attorney.

TO: Mayor Steven Gawron and City Commissioners
Cc: City Manager Bryon Mazade, Finance Director Tim Paul
FROM: Dwana Thompson, Affirmative Action and Risk Management Director
DATE: November 16, 2012
RE: Summary of Process for Temporary Employment Services Provider RFP

The RFP was prepared and mailed to area employment services providers:

Elwood Staffing, 4595 Broadmoor, SE Suite 180, Grand Rapids, MI 49512
GoodTemps, 950 W. Norton Avenue, Suite C, Muskegon, MI 49441
Kelly Services, 388 Garden Avenue, Suite 140, Holland, MI 49424
Manpower, 4536 Dowling Street, Montague, MI 49437
Manpower Group, 5797 Harvey Street, Suite C, Norton Shores, MI 49444
Phoenix Personnel, 1910 E. Apple Avenue, Muskegon, MI 49442
Staffing, Inc., 1635 W. Sherman Blvd., Norton Shores, MI 49441
Trillium Staffing Solutions, 1478 E. Ellis Road, Norton Shores, MI 49444

The City Clerk's Office ran the RFP public notice in The Muskegon Chronicle as required. The bids were due and opened at 2:00 p.m. on Tuesday, October 30, 2012 in the City Commission Chambers. Listed in the order of low bidder to high bidder, bids were received from:

P.I.E. Management, LLC; 120 North Washington Square, Suite 805, Lansing, MI 48933
Elwood Staffing Services, 230 North River, Suite B, Holland, MI 49424
Phoenix Personnel, 1910 E. Apple Avenue, Muskegon, MI 49442
Trillium Staffing Solutions, 1478 E. Ellis Road, Norton Shores, MI 49444

The first opportunity to assemble all committee members for bid review occurred on November 2, 2012 where the bid list was distributed, and as a committee we reviewed the lowest two bids, which were PIE Management and Elwood Staffing Services. Committee members present at the meeting were Public Works Superintendent Doug Sayles, Parks Supervisor Bernadette Young, Marina Supervisor Kevin Santos, DPW Administrative Supervisor Leigh Ann Archer, Public Safety Director Jeff Lewis, Assistant Finance Director Beth Lewis, and Affirmative Action and Risk Management Director Dwana Thompson.

In addition to bid quotations, the committee's discussion focused on factors such as bidder flexibility, location and local presence, the vast range of bids received, responsiveness to City requirements, recruitment process and filling the hard to fill positions, insurance, workers' compensation and transporting injured employees. The committee compiled a list of questions for the companies based on the responses and tabulations submitted in the bid packets.

P.I.E. Management, of Lansing, Michigan submitted the lowest overall bid, and presented to the committee on Wednesday, November 7, 2012. Upon interview and discussion the company gave the committee reservation as to whether they would be able to adequately service our needs. Companywide they currently staff approximately 170 people, in various locations throughout the State of Michigan, Texas, and Wisconsin. P.I.E. Management has no presence in West Michigan. Their closest office is in Lansing, and that is where they would be servicing our account from, until they are able to establish a presence in the Muskegon area.

The chief concern was that the bids were consistent for each position, while the other submissions permitted variation in the rates to allow for differences in levels of liability that would typically affect the markup rate in each position. For example a gun carrying police officer would typically carry a higher level of liability than a clerical CSR-

I position. He would adhere to the rates submitted in the bid; however, if his liability insurance denies any positions, he would elect not to fill that position.

In discussion as to his experience in filling the positions in the RFP, he demonstrated experience and an ability to service us in the clerical and administrative positions, the landscaping and general cleanup duties involved in the parks department, and the building maintenance position. He did not demonstrate experience in the cemetery, highway, and seasonal beach maintenance positions. Concern was expressed with the cash handling requirements of the marina aides, and farmers' market positions, and he spoke of not having any experience filling the public safety positions of police cadets, or part-time firefighters.

Elwood Staffing Services of Holland, Michigan is our current Temporary Staffing Service provider. They submitted the second lowest bid and presented to the committee what we believe to be the lowest responsible bid on Wednesday, November 14, 2012. The city has worked with Elwood (formerly Beacon Staffing) for 4-years and has established an excellent working relationship. Companywide they put 42,000 people to work each year, with 60 branch offices in eleven states.

Elwood currently offers a 1% discount for companies who pay using same week electronic transactions, which we are able to provide with BS&A. Upon interview and discussion Elwood established that the rates quoted in the bid have been approved by their insurance carrier; however; they would not opt to fill part-time police officer positions. Having had experience filling all the other positions with the City of Muskegon, we entered into additional discussion about recruitment for the hard to fill positions, the pre-employment process, and establishing a local Muskegon presence. A very candid discussion took place regarding what happens when an Elwood employee gets injured on the job, and response time.

Upon elaborate review the committee highly recommends and requests approval to allow staff to negotiate the 2013-2015 temporary employment services provider contract with the lowest responsible bidder, Elwood Staffing Services, contingent upon working out agreement terms acceptable to the City Manager and City Attorney.

CITY OF MUSKEGON

RFP – TEMPORARY EMPLOYMENT SERVICES PROVIDERS

10-30-2012

COMPANY	CSR-1	CSR-2	ADMINISTRATIVE SECRETARY	FINANCE DIRECTOR	CEMETERY/ PARKS/ HIGHWAY	MARINA AIDES	SEASONAL BEACH MAINTENANCE	BUILDING MAINTENANCE	FARMERS MARKET	POLICE CADETS	PART TIME FIREFIGHTER	PART TIME POLICE (OPTIONAL)
Phoenix Personnel	38%	38%	38%	\$2123.07	42%/38%	42%/38%	42%/38%	42%/38%	42%/38%	60%/70%	60%/70%	60%/70%
Elwood Staffing	37.5%	37.5%	37.5%	\$2061.54	NO/38.5%	NO/50%	NO/46%	NO/38.5%	NO/37%	37%/38.5%	52%/53.5%	NO/NO
P.I.E. Management, LLC	21.5%	21.5%	21.5%	\$1828.46	25%/21.5%	25%/21.5%	25%/21.5%	25%/21.5%	19.5%/21.5%	19.5%/21.5%	19.5%/21.5%	19.5%/21.5%
Trillium Staffing	42%	42%	42%	\$2153.84	NO HWY 50%/44%	50%/44%	*70%/65%	50%/44%	50%/44%	NO/ NO	NO/ NO	NO/ NO

* City would cover liability

NO HWY – Unable to cover Highway Positions

Cemetery/Parks/Highway/Marina Aides/Seasonal Beach Maintenance/Farmers Market Positions are bid (With PPE/Without PPE)

Police Cadets/Part-Time Firefighters are bid (With PPE/Without PPE)

Part-Time Police are bid (Payroll only services/Traditional services)

Commission Meeting Date: November 27, 2012

Date: November 6, 2012
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
**RE: Former Central Fire Station- Purchase Agreement
between the City of Muskegon and Parkland
Muskegon**

SUMMARY OF REQUEST: Jon Rooks of Parkland Muskegon would like to purchase the former Central Fire Station at 75 W. Walton from the City of Muskegon. Mr. Rooks plans to make at least \$100,000 in improvements to the facility within the first 24 months of ownership. He agrees to move his corporate headquarters into the building by June 1, 2013. In addition, he will be leasing out commercial space for other users within the facility.

FINANCIAL IMPACT: Although the purchase price for the building is minimal, the building and its occupants will generate taxes for the City in the future.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Purchase Agreement between the City of Muskegon and Parkland Muskegon and authorize the Mayor and Clerk to sign all necessary documents, including closing documents at the time of sale.

PURCHASE AGREEMENT

This Agreement is made on Nov. 19, 2012 between the **City of Muskegon**, a Michigan municipal corporation, with offices located at 933 Terrace Street, Muskegon, Michigan, 49440 ("City") and **Parkland Muskegon, Inc.** a Michigan Corporation, 940 Monroe Avenue, NW, Suite 155, Grand Rapids, Michigan 49503 ("Buyer").

1. Purchase and Sale of Premises. City shall sell and Buyer shall purchase, on the conditions set forth in this Agreement, the premises, and all improvements and fixtures thereon, with all beneficial easements, commonly known as the City of Muskegon Central Fire Station, located at 75 West Walton, Muskegon, Michigan and legally described on **Exhibit A** ("Premises") subject to the reservations, restrictions and easements of record.

2. Purchase Price and Manner of Payment. The purchase price for the Premises shall be:

- a. \$1.00, payable in full at closing to City, by check or cash;
- b. The Buyer agrees to invest in the Premises \$50,000 within the first 12 months of ownership and an additional \$50,000 within the next 12 months of ownership, for a total of \$100,000 within the first 24 months of ownership; and
- c. The Buyer agrees to move its corporate headquarters to the premises no later than June 1, 2013.

In default of Buyers obligation to make the investment and/or relocate its corporate headquarters as required above, title to the premises shall revert to the City free and clear of any claim of Buyer or its assigns. In addition, City may retain the consideration for this conveyance free and clear of any claim of Grantee or its assigns. In the event of reversion of title of the above-described Premises, improvements made thereon shall become the property of the City, but the Premises shall be in no worse condition than upon the date of Closing. These covenants and conditions shall run with the land and be recorded in the quit claim deed from City to Buyer.

If Buyer shall fail to satisfy paragraphs 2(a) through (c) as required, City shall file suit within 30 months of the closing or the non-conformance is waived. If the City files suit, City's cost shall be borne by the Defendant causing the need to file suit. If Buyer satisfies paragraphs 2(a) through (c) or City fails to file suit within 30 months of the closing, City shall deliver a quit claim deed terminating the reverter clause and other covenants running with the land. No action may be maintained by the City for a violation of paragraph 2(b) or 2(c) unless commenced within 30 months of the closing.

JR

3. **Title Insurance.** Buyer waives any rights to a title insurance policy paid for by the Seller, but understands that it may purchase title insurance at any time in the future at its own expense. Seller makes no representations or warranties related to the title to the Premises.

4. **Property Taxes and Assessments.** City shall be responsible for the payment of all real estate taxes and assessments that become due and payable prior to the date of closing. Buyer shall be responsible for the payment of all real estate taxes and assessments that become due and payable after the date of closing.

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

6. **Due Diligence Period.** Commencing on the date of this Agreement, Buyer, and Buyer's agents, employees, contractors and consultants may, prior to the date of closing, conduct such inspections, investigations, appraisals, tests, feasibility studies, and determinations of the Premises as Buyer, in its sole discretion, shall desire in order to determine that the title and condition of the Premises is acceptable and that the Premises is suitable for Buyer's intended uses ("Due Diligence Investigation"). As part of the Due Diligence Investigation, Buyer may, among other things, conduct and obtain an asbestos report and remediation plan; a Phase I Environmental Site Assessment with respect to the Premises; a Phase II Environmental Site Assessment with respect to the Premises; and/or a Baseline Environmental Assessment with respect to the Premises. All costs related to the Due Diligence Investigation shall be paid for by Buyer. The Due Diligence Investigation shall be completed within an initial period of 45 days ("Due Diligence Period") after execution of this Agreement by both parties. Buyer may terminate this Agreement at any time prior to closing if dissatisfied with the results or findings of its Due Diligence Investigation.

7. **Representations, Covenants and Warranties of City.** City represents, covenants and warrants the following to be true:

a. **Organization and Standing of City.** City is a Michigan municipal corporation duly organized, validly existing and in good standing under the laws of the State of Michigan.

b. **Authority.** City has the power and authority to enter into and perform its obligations under this Agreement.

c. **Title to Purchased Assets.** The Premises are subject to no mortgage, pledge, lien, encumbrance, security interest, or charge except as would be set forth on a title insurance commitment.

- d. **Existing items in the Fire Station.** The City agrees to leave the furniture, fixtures and equipment presently in the building for the Buyer.
 - e. City agrees that the signing of this Agreement has been authorized by the City of Muskegon City Commission and any defect in approving this Purchase Agreement is waived.
8. **Representations, Covenants, and Warranties of Buyer.** Buyer represents, covenants, and warrants the following to be true:
- a. **Status of Buyer.** Buyer is validly existing and in good standing under the laws of the State of Michigan.
 - b. **Authority.** Buyer has the power and authority to enter into and perform Buyer's obligation under this Agreement.
 - c. **"As-Is" Sale.** **BUYER UNDERSTANDS AND AGREES THAT THERE SHALL BE NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES BETWEEN CITY AND BUYER, AND UPON CLOSING, BUYER WAIVES ANY AND ALL SUCH IMPLIED WARRANTIES, AND ACCEPTS THE PROPERTY "AS IS," "WHERE IS," SUBJECT ONLY TO THE EXPRESS COVENANTS, CONDITIONS AND/OR WARRANTIES CONTAINED IN THIS PURCHASE AGREEMENT. AT CLOSING, BUYER SHALL REPRESENT THAT IT HAS PERSONALLY INSPECTED THE PROPERTY AND IS SATISFIED WITH THE CONDITION OF THE LAND, AND THAT THE PROPERTY IS BEING PURCHASED AS A RESULT OF SUCH INSPECTION AND INVESTIGATION, AND NOT DUE TO ANY REPRESENTATIONS MADE BY OR ON BEHALF OF CITY REGARDING THE PHYSICAL CONDITION OF THE PREMISES.**
9. **Default.**
- a. **By Buyer.** In the event Buyer fails to comply with any or all of the obligations, covenants, warranties or agreements under this Agreement which are to be performed prior to closing or fails to appear for the Closing and such default is not cured within 10 days after receipt of notice (other than Buyer's failure to tender the purchase price in full at Closing, a default for which no notice is required), then City may terminate this Agreement, in which event both parties will be released from any further liability under this Agreement, or City may pursue its legal and/or equitable remedies against Buyer.

SR

b. **By City.** In the event City fails to comply with any or all of the obligations, covenants, warranties or agreements under this Agreement, and such default is not cured within 10 days after receipt of notice, then Buyer may either terminate this Agreement, in which event both parties will be released from any further liability under this Agreement, or Buyer may pursue its legal and/or equitable remedies against City.

10. Closing.

a. **Date of Closing.** Unless the parties otherwise mutually agree, the closing shall be held within 14 days from the Due Diligence Period. The closing shall be held at a mutually convenient location. Based upon Buyer's Due Diligence or Title Conditions, Buyer, in writing, may terminate the Purchase Agreement.

b. **Costs.** The costs associated with this Agreement and the closing shall be paid as follows:

i. Buyer shall pay the premium for the owner's policy of title insurance, if any.

ii. City shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the extent required by this Agreement.

iii. Buyer shall pay for the cost of recording the quit claim deed and transfer fees, if any.

iv. Buyer shall pay for the closing fee charged by the title company.

c. **Deliveries.** At closing, City shall deliver at its sole cost and expense the following documents in a form reasonably satisfactory to Buyer.

iv. the quit claim deed to the Premises.

v. such other documents as may be reasonably required by Buyer or the title company to effectuate the transaction contemplated by this Agreement.

11. Possession. Possession of the Premises is to be delivered to Buyer by City at closing.

12. Risk of Loss. Until the time of closing, risk of loss because of the damage to or destruction of any improvements located on the Premises shall be solely that of City, except to the extent that Buyer caused the damage or destruction. In the event the improvements located on the Premises are damaged prior to the date of closing, the City shall retain any insurance proceeds to be received by City because of said damage or other destruction

13. Notice. All notices and other deliveries required under this Agreement shall be made and given to the appropriate party, or the office of the party, at the address set forth

above or at such other address as may hereafter be specified by such parties by written notice from time to time. Notices shall be effective on the date of receipt, if given by hand, express delivery or recognized courier service. Notices given by certified mail shall be deemed effective three business days after the date of deposit in an authorized postal facility, as shown by its receipt for certified mail. Either party may designate a telephone number to be used for fax notices to such party, in which event any notice transmitted to such number shall be effective on the date shown in the printed confirmation of such transmission, free of error, generated by the sender's machine.

14. Miscellaneous.

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

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

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

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

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

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

g. **Assignment or Delegation.** Buyer shall not assign all or any portion of their rights and obligations contained in this Agreement without the express prior written approval of City, which approval may be withheld in City's sole discretion.

h. **Prohibited Transfer Period and Liquidated Damages.** The property shall not be sold by the Buyer within three (3) years of the closing date, unless review

and approval are given by the City. During this three-year period, if Buyer transfers property to a third party who is not approved by the City, Buyer shall be liable to the City for liquidated damages in the amount equal to the sale price from Buyer to the third-party, minus the substantiated costs of any improvements made to the property by Buyer. Notwithstanding the foregoing, Buyer may assign this and its rights thereunder prior to closing to a new related entity which is controlled by the same principals as the Buyer. This provision for liquidated damages during the prohibited transfer period shall be included in the quit claim deed transferring property to the Buyer.

h. **Venue.** The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

i. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for in this Agreement shall survive the closing date and continue in full force and effect after the consummation of this purchase and sale and continue until all liabilities of Seller and Buyer have been fully satisfied.

This Agreement is executed effective as of the date set forth above.

City - City of Muskegon

By: _____

Name: Stephen J. Gawron

Title: Mayor

Buyer - Parkland Muskegon, Inc.

By: Jon Rooks

Name: Jon Rooks

Title: President

Attest:

By: _____

Name: Ann Cummings, MMC

Title: Clerk

Exhibit A

Legal Description

CITY OF MUSKEGON BLK 762 OF AMENDED PLAT OF BLK 359 & LOTS 1-12 BLK 360 THE VAC PORTION OF
WALTON AVE & VAC ALLEY IN BLK 360 1903 REVISED PLAT OF CITY OF MUSKEGON LOCATED IN PART OF
GOV LOT 1 SEC 19 T10N R16W