

CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 27, 2001

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ **CALL TO ORDER:**
- ❑ **PRAYER:**
- ❑ **PLEDGE OF ALLEGIANCE:**
- ❑ **ROLL CALL:**
- ❑ **HONORS AND AWARDS:**
- ❑ **PRESENTATIONS:**
- ❑ **CONSENT AGENDA:**
 - a. Approval of Minutes. CITY CLERK
 - b. Sale of Vacant Buildable Lot in Jackson Hill. PLANNING & ECONOMIC DEVELOPMENT
 - c. FIRST READING, Zoning Ordinance Amendment to permit only one sign for home occupation business. PLANNING & ECONOMIC DEVELOPMENT
 - d. Post Office Lease, Terrace Street Lots. PLANNING & ECONOMIC DEVELOPMENT
 - e. Purchase of house and property at 1938 Hoyt. COMMUNITY AND NEIGHBORHOOD SERVICES
 - f. Request for Encroachment Agreement at 1476 Getty. ENGINEERING
- ❑ **PUBLIC HEARINGS:**
 - a. Resolution for Development District On Premise Liquor License for 1050 W. Western Ave. PLANNING & ECONOMIC DEVELOPMENT
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**
 - a. Engineering/Design Consultant for Water Filtration Plant Project. DEPARTMENT OF PUBLIC WORKS & WATER FILTRATION

- b. Flag Flying Policy. CITY MANAGER
- c. Flag Flying Request, Rolling Thunder. CITY MANAGER
- d. FIRST READING, Zoning Ordinance Amendment to change front setback requirement. PLANNING & ECONOMIC DEVELOPMENT
- e. FIRST READING, Zoning Ordinance Amendment to allow secondhand stores in the B-2 Convenience and Comparison Business District. PLANNING & ECONOMIC DEVELOPMENT
- f. FIRST READING: Amendments to the Animal Control Ordinance. CITY MANAGER

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

☐ **CLOSED SESSION:**

- *Reminder: Individuals who would like to address the City Commission shall do the following:*
- 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.)

☐ **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 GAIL A. KUNDINGER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: November 27, 2001
To: Honorable Mayor and City Commissioners
From: Gail A. Kunding, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, November 13, 2001.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 27, 2001

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, Michigan at 5:30pm, Tuesday, November 27, 2001.

Mayor Nielsen opened the meeting with a prayer from Reverend Jeff Sumner of Bible Methodist Church after which members of the City Commission and members of the public joined in reciting the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Fred J. Nielsen; Vice-Mayor Clara Shepherd; Commissioners Robert Schweifler, Lawrence Spataro, John Aslakson, and Jone Wortelboer-Benedict; City Manager Bryon Mazade; City Attorney John Schrier and City Clerk Gail Kunding. Absent: Commissioner Karen Buie (excused).

2001-137 CONSENT AGENDA: Items listed under the Consent Agenda have been considered to be routine in nature and will be enacted in one motion. No separate discussion will be held on these items. If discussion is required, it will be removed from the Consent Agenda and be considered separately.

a. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, November 13, 2001.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

b. Sale of Vacant Buildable Lot in Jackson Hill. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: A city-owned lot in the Jackson Hill neighborhood was advertised on November 4, 2001, for bid on the 13th of November. The City did not receive other bids except from Ms. Carolyn Williams in the amount of \$3,000. The buyer understands the conditions and requirements of the purchase agreement which includes construction of a single-family resident within 18

months, and existing trees shall not be cleared except to accommodate the structure and driveway. Ms. Williams will build a 1647 sq. ft. house with an attached 2-stall garage. Other property sale policies and incentives will also apply.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval to sell the property to Ms. Carol Williams for \$3,000.

c. FIRST READING, Zoning Ordinance Amendment to permit only one sign for home occupation businesses. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2334 (Signs) of Article XXIII of the City's Zoning Ordinance to permit only one sign for home occupation businesses.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to change the proposed language in the article and section described above.

(Requires second reading)

d. Post Office Lease, Terrace Street Lots. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the lease between the City of Muskegon and the United States Postal Service for parking purposes on the Terrace Street Lots. The lease is temporary and will expire on April 1, 2002. The purpose of the lease is to allow the Post Office to provide parking to their employees, who have few parking options since the Mall parking has been fenced off.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the lease and direct the Mayor and City Clerk to sign the lease.

e. Purchase of house and property at 1938 Hoyt. COMMUNITY AND NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: The Community and Neighborhood Services department would like to purchase the structure at 1938 Hoyt from the present owners Mr. And Mrs. Bryan Carlson. After taking ownership of the property, the Community and Neighborhood Services department will demolish the existing

structure and land bank the parcel to be used in the City's Infill New Construction program. The department intends to build a house on the site in the coming year to be sold to a qualified family. The house and site will be purchased from the Carlson's for the price of \$1.00 (one dollar).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve this request.

f. Request for Encroachment Agreement @ 1476 Getty.
ENGINEERING

SUMMARY OF REQUEST: ESP, business owner, at 1476 Getty has submitted an encroachment agreement form requesting your permission to install a 5' by 4' internally light sign on top of an existing pole in front of the aforementioned address.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the encroachment.

Motion by Commissioner Schweifler, second by Commissioner Benedict to approve the Consent Agenda.

ROLL VOTE: Ayes: Nielsen, Schweifler, Shepherd, Spataro, Aslakson, Benedict

Nays: None

MOTION PASSED

2001-138 PUBLIC HEARINGS:

a. Resolution for Development District On Premise Liquor License for 1050 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To hold a public hearing on the request for a Class C Liquor License for Theodore C. Fricano and approve the resolution. The request is necessary due to a lack of available liquor licenses in the City of Muskegon. The Liquor Control Code allows for additional liquor licenses within Downtown Development Authority Districts under certain conditions.

FINANCIAL IMPACT: Approval of the liquor license will allow for a new restaurant in the downtown area of Muskegon, which will ultimately result in increased revenue for the City.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To hold a public hearing and approve the

resolution.

The public hearing opened at 5:38pm to hear and consider any comments from the public.

Motion by Commissioner Aslakson, second by Commissioner Benedict to close the public hearing at 5:43pm and approve the resolution.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Aslakson, Benedict, Nielsen.

Nays: None

MOTION PASSED

2001-139 NEW BUSINESS:

a. Engineering/Design consultant for Water Filtration Plant Project. DEPARTMENT OF PUBLIC WORKS & WATER FILTRATION

SUMMARY OF REQUEST: To enter into an engineering/design and construction oversight contract with Tetra Tech MPS for Water Filtration Plant improvements.

FINANCIAL IMPACT: The project cost, including construction oversight, is \$717,000.

BUDGET ACTION REQUIRED: Engineering/Design costs to be paid through existing water revenue bonds.

STAFF RECOMMENDATION: Recommend the Mayor and City Commission endorse and enter into an engineering/design and construction oversight contract with TetraTech MPS for the Water Filtration Plant.

Motion by Commissioner Spataro, second by Commissioner Aslakson to endorse the contract with TetraTech MPS.

ROLL VOTE: Ayes: Shepherd, Spataro, Aslakson, Benedict, Nielsen, Schweifler.

Nays: None

MOTION PASSED

b. Flag Flying Policy. CITY MANAGER

SUMMARY OF REQUEST: To approve a policy for the consideration of requests to fly flags on City property

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the policy.

Motion by Commissioner Spataro, second by Commissioner Schweifler to approve the policy.

ROLL VOTE: Ayes: Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd.

Nays: None

MOTION PASSED

c. Flag Flying Request, Rolling Thunder. CITY MANAGER

SUMMARY OF REQUEST: To consider a request from Rolling Thunder to fly the MIA/POW flag.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution granting permission to Rolling Thunder to fly the MIA/POW flag.

Motion by Vice-Mayor Shepherd, second by Commissioner Benedict to approve the resolution.

ROLL VOTE: Ayes: Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Spataro.

Nays: None

MOTION PASSED

d. FIRST READING, Zoning Ordinance Amendment to change front setback requirement. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend the City's Zoning Ordinance to change the front setback landscaping requirements for all multi-family, business and industrial districts.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to change the proposed language in the articles and sections described.

Motion by Commissioner Spataro, second by Commissioner Schweifler to approve the amendment.

ROLL VOTE: Ayes: Benedict, Nielsen, Schweifler, Shepherd, Spataro, Aslakson.

Nays: None

MOTION PASSED (Requires second reading)

e. FIRST READING, Zoning Ordinance Amendment to allow

secondhand stores in the B-2, Convenience and Comparison Business District. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1101 (Special Land Uses Permitted) of Article XI (B-2, Convenience and Comparison Business) of the City's Zoning Ordinance to allow secondhand stores, under certain conditions.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to change the proposed language in the articles and sections described.

Motion by Commissioner Schweifler, second by Commissioner Spataro to approve the amendment.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Aslakson, Benedict.

Nays: Nielsen

MOTION PASSED (Requires second reading)

f. FIRST READING, Amendments to the Animal Control Ordinance. CITY MANAGER

SUMMARY OF REQUEST: Approve the Ordinance to amend the Animal Control Ordinance to regulate cats in the City.

FINANCIAL IMPACT: Total administrative costs for the entire program that will result from this ordinance is approximately \$32,000, FY 2002. Cat licensing fees will partially offset this cost (est. \$2,000).

BUDGET ACTION REQUIRED: Some of the resources are already budgeted. A budget adjustment will have to be made for Animal Control Services, which will be billed quarterly.

STAFF RECOMMENDATION: Adopt the ordinance.

Motion by Commissioner Benedict, second by Vice-Mayor Shepherd to approve the ordinance.

ROLL VOTE: Ayes: Nielsen, Schweifler, Shepherd, Spataro, Aslakson, Benedict.

Nays: None

MOTION PASSED (Requires second reading)

2001-140 ANY OTHER BUSINESS:

Commissioner Spataro presented a petition from the Marsh Field Association.

2001-141 **CLOSED SESSION:**

Motion by Commissioner Aslakson, second by Commissioner Benedict to go into closed session at 7:10pm.

ROLL VOTE: Ayes: Shepherd, Spataro, Aslakson, Benedict, Nielsen.

Nays: None

Not Present: Schweifler

MOTION PASSED.

Motion by Commissioner Benedict, second by Commissioner Spataro to return to open session at 8:26pm.

ROLL VOTE: Ayes: Shepherd, Spataro, Aslakson, Benedict, Nielsen, Schweifler.

Nays: None

MOTION PASSED.

Motion by Commissioner Aslakson, second by Commissioner Benedict to concur with the attorney.

ROLL VOTE: Ayes: Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd.

Nays: None

MOTION PASSED.

ADJOURNMENT: The Regular Commission Meeting for the City of Muskegon was adjourned at 8:30pm.

Respectfully submitted,



Gail Kunding, CMC/AAE
City Clerk

Commission Meeting Date: November 27, 2001

Date: November 19, 2001
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *abc*
RE: Sale of a Buildable Lot

SUMMARY OF REQUEST:

A city-owned lot in Jackson Hill neighborhood was advertised on November 4, 2001 for bid on the 13th of November. The City did not receive other bids except from Ms. Carolyn Williams in the amount of \$3,000. The buyer understands the conditions and requirements of the purchase agreement which includes construction of a single-family residential within 18 months, and existing trees shall not be cleared except to accommodate the structure and driveway. Ms. Williams will build a 1647 sq. ft. house with an attached 2-stall garage. Other property sale policies and incentives will also apply.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Staff recommends approval to sell the property to Ms. Carolyn Williams for \$3,000.

COMMITTEE RECOMMENDATION:

None.

Resolution No. 2001-137(b)

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE SALE OF A BUILDABLE LOT IN JACKSON HILL NEIGHBORHOOD FOR \$3,000.

WHEREAS, Ms. Carolyn Williams has placed a \$400 deposit for the parcel designated as parcel number 24-205-154-0003-00 located on Yuba Street;

WHEREAS, Ms. Williams' bid of \$3,000 for the parcel designated as parcel numbers 24-205-154-0003-00, located on Yuba Street, is the only bid received;

WHEREAS, these parcels will be joined as one whole parcel after the sale has been approved and purchase agreement has been signed;

WHEREAS, Ms. Williams intends to construct a 1647 square foot house with 2-stall attached garage, thereby, relieving the City of further maintenance costs and generate additional tax revenue for the City;

WHEREAS, the sale is consistent with City policy regarding the disposition of buildable lots;

NOW THEREFORE BE IT RESOLVED, that parcel number 24-205-154-0003-00, located on Yuba Street be sold to the above-mentioned buyer, with legal descriptions as:

S ½ Lot 2 & All Lot 3 Blk 154, Revised Plat of 1903, City of Muskegon

Adopted this 27th day of November, 2001

Ayes: Nielsen, Schweifler, Shepherd, Spataro, Aslakson, Benedict

Nays: None

Absent Buie (excused)

By: Fred J. Nielsen
Fred J. Nielsen, Mayor

Attest: Gail Kunderger
Gail Kunderger, Clerk

CERTIFICATION

I hearby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on November 27, 2001.

By: Gail Kunderger
Gail Kunderger, Clerk

PROPERTY SALE OF CITY OWNED LOTS
City of Muskegon, Michigan



REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is made December 11, 2001, by and between the **CITY OF MUSKEGON**, a municipal corporation, with offices at 933 Terrace, Muskegon, Michigan 49440 ("Seller"), and **CAROLYN WILLIAMS**, of 1295 Kenneth Street, Muskegon, Michigan 49442 ("Buyer").

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

The South 1/2 of Lot 2 and all of Lot 3, Block 154 of the Revised Plat (of 1903) of the City of Muskegon, as recorded in Liber 3 of Plats, Page 71, Muskegon County Records (a/k/a 516 Yuba Street). [Parcel No. 24-205-154-0003-00]

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

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises shall be Three Thousand Dollars (\$3,000). Seller acknowledges receipt of a Four Hundred Dollar (\$400) deposit from Buyer for the Premises. The balance of the purchase price, Two Thousand Six Hundred Dollars (\$2,600), payable in cash or certified funds, shall be paid by the Buyer and to Seller at the Closing.

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

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

5. **Covenant to Construct Improvements and Use.** Buyer acknowledges that, as part of the consideration inuring to the City, Buyer covenants and agrees to construct on the premises a single-family home, up to all codes, within eighteen (18) months of the closing of this transaction. Buyer may only remove those trees necessary for construction of the home and driveway. The home shall be substantially completed within eighteen (18) months and, in the event said substantial completion has not occurred, or the restriction of this paragraph relating to tree removal is violated, in the sole judgment of the City, the property and all improvements then installed shall revert in title to the City, without any compensation or credit to Buyer. Buyer further covenants that the home shall be owner occupied for five (5) years after the closing. The covenants in this paragraph shall survive the closing and run with the land.

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

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

8. **Real Estate Commission.** Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

9. **Closing.** The closing date of this sale shall be on or before December 11, 2001 ("Closing"). The Closing shall be conducted at Transnation Title Insurance Company, 570 Seminole Road, Ste. 102, Muskegon, MI 49444. If necessary, the parties shall execute an IRS closing report at the Closing.

10. **Delivery of Deed.** Seller shall execute and deliver a quit claim deed to Buyer at Closing for the Premises.

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

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

13. **Costs.** Seller shall be responsible to pay the Michigan transfer tax, if any, in the amount required by law. In addition, Seller shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the Premises, to the extent required by this Agreement.

Buyer shall pay for the cost of recording the deed to be delivered at Closing.

Buyers are purchasing the Premises under the Jackson Hill In-Fill Program and are eligible for total incentives not to exceed Two Thousand Five Hundred Dollars(\$2,500), from the following list:

<u>Type of Improvement</u>	<u>Possible Incentive Allowance</u> <u>(under Jackson Hill program)</u>
Two-story home	\$2,000
"Stick-built" home	\$2,000
Bay Window (at least one (1) in front of home)	\$ 500
Front Porch	\$ 300

The total amount of incentives, not to exceed Two Thousand Five Hundred Dollars (\$2,500), will be escrowed from the proceeds at closing pursuant to the Jackson Hill In-Fill Program. Upon completion of construction, incentive payments, determined by the City to be authorized by this agreement, shall be made to the Buyer.

14. **General Provisions.**

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

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

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

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

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

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

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

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

The parties have executed this Real Estate Purchase Agreement the day and year first above written.

WITNESSES:

Linda Potter
Linda Potter

Jo Ann Krukowski
Jo Ann Krukowski

SELLER: CITY OF MUSKEGON

Fred J. Nielsen
Fred J. Nielsen, Mayor

Gail A. Kunding
Gail A. Kunding, Clerk

BUYER:

Carolyn Williams
Carolyn Williams
Social Security No. 362 64 6370

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF MUSKEGON, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440,

QUIT CLAIMS to CAROLYN WILLIAMS, of 1295 Kenneth Street, Muskegon, MI 49442

the following described premises situated in the City of Muskegon, County of Muskegon, State of Michigan, to wit:

The South 1/2 of Lot 2, and all of Lot 3, of Block 14 of the Revised Plat of 1903,
of the City of Muskegon, as recorded in Liber 3 of Plats, Page 71, Muskegon County Records
(a/k/a 516 Yuba Street). Parcel No. 24-205-154-0003-00;

for the sum of Three Thousand Dollars(\$3,000).

PROVIDED, HOWEVER, Grantee, or her assigns, shall commence construction of one (1) single family home on the premises herein conveyed within eighteen (18) months after the date hereof. In default of such construction, title to the premises shall revert to the City of Muskegon free and clear of any claim of Grantee or her assigns. In addition, the City of Muskegon may retain the consideration for this conveyance free and clear of any claim of Grantee or her assigns. Buyer shall remove only those trees necessary for construction of the home and driveway. "Complete construction" means: (1) issuance of a residential building permit by the City of Muskegon; and, (2) in the sole opinion of the City of Muskegon's Director of Inspections, substantial completion of the dwelling described in the said building permit. In the event of reversion of title of the above described premises, improvements made thereon shall become the property of Grantor. Provided, further, that Grantee covenants that the parcel described above shall be improved with not more than one (1) single family home, and it shall be owner-occupied for 5 years after the date of this deed. These covenants and conditions shall run with the land.

This deed is exempt from real estate transfer tax pursuant to the provisions of MCLA 207.505(h)(i) and MCLA 207.526 Sec. 6(h)(i).

Dated this _____ day of _____, 2001.

Signed in the presence of:

CITY OF MUSKEGON

Linda Potter
Linda Potter

By Fred J. Nielsen
Fred J. Nielsen, Its Mayor

Jo Ann Krukowski
Jo Ann Krukowski,

and Gail A. Kunderger
Gail A. Kunderger, Its Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 4th day of December, 2001, FRED J. NIELSEN and GAIL A. KUNDINGER, Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

PREPARED BY: G. Thomas Johnson
G. Thomas Johnson, Parmenter O'Toole
175 W. Apple Avenue
Muskegon, MI 49443-0786
Telephone: 231/722-1621

Linda S. Potter
Linda S. Potter
Notary Public, Muskegon County, Michigan
My commission expires: 9-25-02

WHEN RECORDED RETURN TO: Grantees

SEND SUBSEQUENT TAX BILLS TO: Grantees

Commission Meeting Date: November 27, 2001

*Needs
2nd Reading*

Date: November 16, 2001
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *(B)*
RE: Zoning Ordinance Amendment to permit only one sign for home occupation businesses.

SUMMARY OF REQUEST:

Request to amend Section 2334 (Signs) of Article XXIII of the City's Zoning Ordinance to permit only one sign for home occupation businesses.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to change the proposed language in the article and section described above.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request on 11/15/01. The vote was unanimous, with L. Abraham, B. Smith, and F. Nielsen absent.

**Staff Report [EXCERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING**

November 15, 2001

Hearing; Case 2001-41: Staff-initiated request for an amendment to the Zoning Ordinance to allow only one sign for home occupation businesses.

BACKGROUND

In November of 2000, the Zoning Ordinance was amended to reflect changes in the sign ordinance for home occupation signage. The language in each district where home occupations are allowed was amended to refer to the sign section of the ordinance instead of giving a conflicting requirement for signage. However, this created another unintentional issue, as the sign section of the ordinance simply states that 'signs' are allowed for home occupations, without stating a specific number allowed. The old language, in each district, specifically stated that one sign was allowed, so staff is asking to amend the sign section to again state that only one sign is permitted. The proposed change is shown below:

SECTION 2334: SIGNS (amended 8/98)

6. Permitted signs in all residential and mobile home park districts:

- c. *One (1) non-illuminated wall signs of up to eight (8) square feet for a home occupation.*

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2334 (Signs) of Article XXIII of the City's Zoning Ordinance to permit only one sign for home occupation businesses.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2334 (Signs) of Article XXIII of the Zoning Ordinance of the City of Muskegon is hereby amended to read:

6. Permitted signs in all residential and mobile home park districts:
 - c. One (1) non-illuminated wall sign of up to eight (8) square feet for a home occupation.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Gail A. Kunding, City Clerk

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on November 27, 2001, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2334 (Signs) of Article XXIII of the City's Zoning Ordinance to permit only one sign for home occupation businesses.

SECTION 2334: SIGNS

7. Permitted signs in all residential and mobile home park districts:

- d. One (1) non-illuminated wall sign of up to eight (8) square feet for a home occupation.

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 _____, 2001

CITY OF MUSKEGON

By _____
Gail A. Kunding
Its Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: November 27, 2001

Date: November 19, 2001
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department *CB*
RE: Post Office Lease- Terrace Street Lots

SUMMARY OF REQUEST: To approve the attached lease between the City of Muskegon and the United States Postal Service for parking purposes on the Terrace Street Lots. The lease is temporary and will expire on April 1, 2002. The purpose of the lease is to allow the Post Office to provide parking to their employees, who have few parking options since the Mall parking has been fenced off.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached lease and direct the Mayor and City Clerk to sign the lease.

COMMITTEE RECOMMENDATION: None.

LEASE

This Lease is made this 27th day of November, 2001 between the City of Muskegon, of 933 Terrace St., Muskegon, MI 49440 ("Landlord") and the United States Postal Service, of Bloomingdale, Illinois 60117-7000 ("Tenant").

In consideration of the mutual promises of the parties set forth in this Lease and other valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

1. **Description of Leased Premises.** Landlord leases to Tenant, and Tenant rents from Landlord, the premises located at the Northwest corner of Western Ave. and Terrace St. in Blocks 556, 557 and 558 owned by the Landlord and subject to a purchase option by others, (herein "option holder") in Muskegon, Michigan ("Premises"), subject to all the terms and conditions of this Lease. A more complete legal description is attached as Exhibit A. The land included in the premises does not include land needed by the Landlord for the design, engineering, grading or construction of Shoreline Drive or the relocated Railroad track and right of way.

2. **Term.** The term of this Lease shall be for five months commencing on November 2, 2001 and ending on April 1, 2002, both dates inclusive, unless sooner terminated as set forth in this Lease.

3. **Rent.** Tenant shall pay to Landlord the monthly rental of \$1.00 in advance on the date this Lease is signed. The rent shall be payable at the address for Landlord listed above or at such other address as requested by Landlord.

4. **Liability and Indemnity by Tenant.** Subject to the provisions of the Federal Tort Claims Act, 28 U.S.C.A. 1346(b), the United States Postal Service expressly agrees to save harmless and indemnify the Landlord from all claims, loss, damage, actions, causes of action, expense, and/or liability resulting from the use of said premises whenever such claim, loss, damage, actions, causes of action, expense, and/or liability arise from the negligent or wrongful act or omission by any employee of the United States Postal Service while acting within the scope of his employment under circumstances where the United States Postal Service, if a private person, would be liable in accordance with the law of the place where the negligent or wrongful act or omission occurred. Notwithstanding the above, the United States Postal Service shall be under no obligation to save harmless and indemnify the Landlord where any negligent or wrongful act or omission by the Landlord, its employees or agents, in any way causes or contributes to the claim, loss, damage, actions, causes of action, expense and/or liability.

5. **Insurance.** Landlord may, at Landlord's option, keep in force general public liability insurance or Risk Authority coverage protecting Landlord against claims for damage to person or property, including damage to the Premises. However, Landlord is under no duty to keep in force any insurance to protect the person or property of Tenant or Tenants' employees or invitees; and therefore if Tenant wishes to enjoy insurance protection for Tenant's person or

property, it shall be Tenant's sole responsibility to obtain such insurance at Tenant's sole expense.

Tenant releases Landlord from any liability arising from loss, damage or injury caused by fire or other casualty for which insurance is carried by Tenant under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the injured party under the policy.

6. **Condition of Premises.** Tenant accepts the Premises "AS IS", in its existing condition. No representation, statement or warranty, express or implied, has been made by or on behalf of Landlord as to such condition, or as to the use that may be made of the Premises. In no event shall Landlord be liable to Tenant for any defect in the Premises or for limitations on its use. No representation or warranty of habitability, express or implied, has been made by or on behalf of Landlord to Tenant.

At the termination of this Lease, Tenant shall return the Premises and all equipment, appliances and fixtures in as good a condition as when Tenant took possession, ordinary wear and tear excepted.

7. **Maintenance; Plowing.** Tenant shall maintain the Premises in reasonable repair during the term of this Lease and comply with the health and safety laws of Michigan and the local unit of government where the Premises are located. Tenant shall be responsible for snowplowing and other measures to keep the premises available for the employees parking the subject of this lease.

All personal property in the Premises, including, without limitation, employee vehicles and their contents, shall be at the risk of Tenant or Tenant's employees only, and Landlord shall not be liable for any loss of or damage to such personal property.

8. **Fire or Casualty.** In the event the Premises are totally destroyed by fire, wind, or other causes beyond the control of Landlord, or are condemned or otherwise taken by authority of local, state or federal government, then in any of these events this Lease shall terminate as of the date of such destruction, condemnation or taking. If the Premises are damaged by fire, rain, wind or other such causes, so as to render the same partially untenable or partially unfit for use, but are repairable within a reasonable time, then this Lease shall remain in full force and effect, but Tenant's rent shall be proportionately reduced until the Premises are repaired.

9. **Assignment or Subletting.** Tenant is prohibited from assigning Tenant's interest in this Lease, or from subletting the Premises.

10. **Reserved Rights.** Landlord reserves the following rights:

a. to enter the Premises at all reasonable hours for inspection, repairs, alterations or additions and for all activities related to the design, engineering excavating or construction of Shoreline Drive and the relocated Railroad tracks and right of way;

b. to exhibit the Premises to prospective tenants, purchasers or others; to display without molestation by Tenant, signs advertising the premises for sale or rent;

c. to enter the Premises for any purpose whatsoever related to the safety, protection, preservation or improvement of the Premises or the building;

The exercise of the reserved rights of Landlord shall never be deemed an eviction or disturbance of Tenant's peaceful use and possession of the Premises and shall never render Landlord liable in any manner to Tenant or to any person in the Premises.

11. **Liens and Encumbrances.** Tenant will not create or permit to be created or to remain, and will promptly discharge, at Tenant's sole cost and expense, any lien, encumbrance or charge upon the Premises or any part thereof, or upon Tenant's leasehold interest therein, which lien, encumbrance or charge arises out of the use or occupancy of the Premises by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, alteration, addition, repair or demolition of any part of the Premises. Notice is given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises or any part thereof through or under Tenant, and that no construction or other liens for any such labor or materials shall attach to the interest of Landlord in and to the Premises.

12. **Abandoned Property.** It is expressly agreed by the parties that any personal property left on the Premises by Tenant after Tenant vacates the Premises or after this Lease is terminated may be considered by Landlord to be abandoned by Tenant, and Landlord shall have the right, without further notice, to sell or otherwise dispose of the personal property, and retain the proceeds, if any, derived from the same.

13. **Default and Repossession.** Both Landlord and Tenant have read, understood and agree to all of the paragraphs of this Lease, and that any infraction shall constitute a default of this Lease and provide grounds for immediate institution of eviction proceedings.

If the Premises are deserted or vacated, or if there is a default in the payment of rent or any part thereof for more than seven days after written notice of such default by Landlord, or if there is a default in the performance of any other covenant, agreement, condition, rule or regulation in this Lease or incorporated by reference for more than seven days after written notice of such default by Landlord, this Lease (if Landlord so elects) shall become null and void, and Landlord shall have the right to reenter or repossess the Premises, either by summary proceedings, surrender, or otherwise, and dispossess and remove Tenant or other occupants and their effects from the Premises, without being liable to any prosecution. In such case, Landlord may, at Landlord's option, relet the Premises or any part of the Premises, as the agent of Tenant, and Tenant shall pay Landlord the difference between the rent set forth in paragraph 2 for the portion of the term of this Lease remaining at the time of reentry or repossession and the amount, if any, received or to be received under such reletting.

14. **Holding Over.** It is agreed that any holding over by the Tenant upon expiration of the term of this Lease or any renewal or extension of the term of this Lease, shall operate as an extension of this Lease from month to month only.

15. **General Provisions.**

a. **Governing Law.** This Lease 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 Lease 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 Lease 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 Lease 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 Lease may be executed in counterparts, and each set of duly delivered identical counterparts that includes all signatories shall be deemed to be one original document.

e. **Non-Waiver.** No waiver by any party of any provision of this Lease 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 Lease.

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

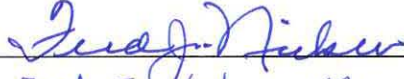
g. **Venue.** The parties agree that for purposes of any dispute in connection with this Lease, the Muskegon County District or Circuit Court, as appropriate, shall have exclusive jurisdiction and venue.

h. **Terms.** Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

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

Landlord and Tenant executed this Lease effective as of the date set forth above.

Landlord – City of Muskegon


Fred J. Nielsen, Mayor

Tenant – United States Postal Service


Arthur Strange
Contracting Officer

EXHIBIT A

LEGAL DESCRIPTION

Parcel #1

Blocks 556 and 557 and Lot 1 and part of Lots 2 and 3 of Block 558, part of vacated Water Street and vacated Market Street, of the Revised Plat of the City of Muskegon as recorded in Liber 3 of Plats, Page 71, described as: Commencing at the South most corner of said Block 556 for point of beginning, thence North $62^{\circ}44'00''$ West along the Northeasterly line of Terrace Street as extended a distance of 1248.69 feet; thence Northwesterly along said Northeasterly line of Terrace Street as extended on the arc of a 302.48 foot radius curve to the left a distance of 80.01 feet to the Southerly right of way line of the C & O Railroad (the long chord of said curve bears North $70^{\circ}18'32''$ West 79.78 feet, the central angle of said curve is $15^{\circ}09'20''$); thence Northeasterly along said Southerly right of way line on the arc of a 715.00 foot radius curve to the right a distance of 150.10 feet (the long chord of said curve bears North $55^{\circ}32'54''$ East 149.83 feet, the central angle of said curve is $12^{\circ}01'40''$); thence Northeasterly along said Southerly right of way line on the arc of a 570.00 foot radius curve to the right a distance of 533.06 feet to the Northwesterly line of vacated Water Street (the long chord of said curve bears North $88^{\circ}22'02''$ East 513.84 feet, the central angle of said curve is $53^{\circ}34'57''$); thence South $50^{\circ}56'50''$ East 33.03 feet to the intersection of the two centerlines of said vacated Water Street; thence South $62^{\circ}44'00''$ East along the centerline of vacated Water Street 981.47 feet to the Northwesterly line of Western Avenue; thence South $56^{\circ}56'42''$ West along said Northwesterly line of Western Avenue 417.83 feet to point of beginning.

EXCEPT THE FOLLOWING PARCELS

Parcel A Exception

That part of Block 557 of Lot 1 and part of Lots 2 and 3 of Block 558, and part of vacated Water Streets, of the Revised Plat of 1903 of the City of Muskegon as recorded in Liber 3 of Plats, Page 71, Muskegon County, Michigan, described as follows: Commencing at the South most corner of Block 556 of said Revised Plat of 1903; thence North $61^{\circ}54'41''$ West along the Northeasterly line of Terrace Street as extended 1205.00 feet for POINT OF BEGINNING; thence continue North $61^{\circ}54'41''$ West along said Northeasterly line of Terrace Street 43.59 feet; thence Northwesterly along said Northeasterly line of Terrace Street as extended on the arc of a 302.48 foot radius curve to the left a distance of 80.01 feet to the Southerly right of way line of the CSX Railroad right of way (the central angle of said curve is $15^{\circ}09'20''$ and the long chord of said curve bears North $69^{\circ}29'13''$ West 79.78 feet); thence Northeasterly along said Southerly right of way line of the arc of a 715.00 foot radius curve to the right a distance of 150.10 feet (the central angle of said curve is $12^{\circ}01'40''$ and the long chord of said curve bears North $56^{\circ}22'13''$ East 149.83 feet); thence Northeasterly along said Southerly right of way line on the arc of a 570.00 foot radius curve to the right a distance of 533.06 feet (the central angle of said curve is $53^{\circ}34'57''$ and the long chord of said curve bears North $89^{\circ}11'21''$ East 513.84 feet); thence South $50^{\circ}07'36''$ East 33.03 feet to the intersection of the two centerlines of said vacated Water Streets; thence South $61^{\circ}54'41''$ East along the centerline of vacated Water Street 149.56 feet to the Southerly line of PROPOSED SHORELINE DRIVE; thence North $85^{\circ}52'26''$ West along said Southerly line of PROPOSED SHORELINE DRIVE; thence North $85^{\circ}52'26''$ West along said Southerly line of PROPOSED SHORELINE DRIVE 211.05 feet; thence Westerly along said Southerly line of PROPOSED SHORELINE DRIVE on the arc of a 703.51 foot radius curve to the left a distance of 173.05 feet (the central angle of said curve is $14^{\circ}05'38''$ and the long chord of said curve bears South $87^{\circ}04'45''$ West 172.62 feet); thence South $80^{\circ}01'56''$ West along said Southerly line of PROPOSED SHORELINE DRIVE 273.19 feet; thence Westerly along said Southerly line of PROPOSED SHORELINE DRIVE on the arc of a 589.00 foot radius curve to the left a distance of 31.33 feet (the central angle of said curve is $03^{\circ}02'50''$ and the long chord of said curve bears South $78^{\circ}30'31''$ West 31.32 feet) to Point of Beginning. Containing 1.905 Acres.

Parcel C Exception

All that part of the Revised Plat of 1903 of the City of Muskegon as recorded in Liber 3 of Plats, Page 71, Muskegon County Records, described as: Commencing at the intersection of the North right of way line of Terrace Street, said line also being the South line of Block 557 when extended Northwest, and the Western right of way line of East Western Avenue, said point being the Southeast corner of Block 556; thence North $62^{\circ}44'00''$ West along the North right of way line of Terrace Avenue for a distance of 382.98 feet to the true Place of Beginning; thence continuing along the North right of way line of Terrace Avenue North $62^{\circ}44'00''$ West for a distance of 348.26 feet to a point; thence North $23^{\circ}17'55''$ East for a distance of 45.61 feet to a point; thence along a

curve to the right having the following functions: Radius 460.00 feet; arc length 125.83 feet and a chord which bears North 05°06'58" West for a distance of 125.43 feet to a point; thence North 2°43'14" East for a distance of 91.77 feet to a point; thence North 42°16'46" West for a distance of 33.10 feet to a point on the south right of way line of the proposed Shoreline Drive; thence along the South right of way line of the proposed Shoreline Drive North 87°16'46" West for a distance of 54.44 feet to a point; thence leaving the South right of way line of the proposed Shoreline Drive along a curve to the right having the following functions: Radius 703.51 feet; arc length 116.58 feet and a chord which bears North 88°33'25" East for a distance of 116.45 feet to a point; thence South 86°41'45" East for a distance of 211.05 feet to a point; thence South 62°44'00" East along the centerline of Water Street for a distance of 15.77 feet to a point on the South right of way line of proposed Shoreline Drive; thence along the South right of way line of the proposed Shoreline Drive North 87°16'46" West for a distance of 143.14 feet to a point; thence leaving the South right of way line of the proposed Shoreline Drive South 2°43'14" West for a distance of 115.17 feet to a point; thence along a curve to the left having the following functions: radius 399.99 feet; arc length 388.40 feet and a chord which bears South 30°00'23" East for a distance of 367.62 feet to a point to the Place of Beginning. Containing 46,919.69 square feet (1.08 acres), more or less.



RECEIVED

APR 11 2002

CITY OF MUSKEGON
PLANNING DEPARTMENT

Certified Mail 70011140000391371651

March 14, 2002

City of Muskegon
P O Box 536
Muskegon MI 49440-0536
Attn: Cathy Brubaker

**RE: Muskegon, MI 49440-9998 -
Temporary Employee Parking**

Dear Ms. Brubaker:

Enclosed is a fully executed copy of the Lease Agreement for subject facility.

We appreciate you providing us with this space in your facility.

Sincerely,

A handwritten signature in blue ink that reads "Arthur Strange".

Arthur Strange
Manager, Real Estate

Enclosure

Commission Meeting Date: November 27, 2000

Date: November 19, 2001

To: Honorable Mayor & City Commission

**From: Community and Neighborhood Services
Department**

RE: Purchase of house and property at 1938 Hoyt

SUMMARY OF REQUEST: The Community and Neighborhood Services department would like to purchase the structure at 1938 Hoyt from the present owners Mr. and Mrs. Bryan Carlson. After taking ownership of the property, the Community and Neighborhood Services department will demolish the existing structure and land bank the parcel to be used in the City's Infill New Construction program. The department intends to build a house on the site in the coming year to be sold to a qualified family. The house and site will be purchased from the Carlson's for the price of \$1.00 (one dollar).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve this request.

COMMITTEE RECOMMENDATION: None

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is effective on _____, 2001, by and between Bryan E. and Susan E. Carlson, husband and wife, of 3248 Roosevelt Road, Muskegon, Michigan 49441 ("Seller"), and the City of Muskegon, a Michigan municipal corporation, with offices at 933 Terrace Street, Muskegon, MI 49442 ("Buyer").

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title, and interest in all adjoining public ways, the real property located at 1938 Hoyt Street in the City of Muskegon, County of Muskegon, State of Michigan, and legally described as:

Lots 18, 19, and 20 Block 3, Terrace Street Addition according to the recorded Plat thereof in Liber 3 of Plats on Page 32

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

2. **Consideration and Manner of Payment.** In exchange for a warranty deed from Seller to Buyer, Buyer shall pay \$1.00 and take the property subject to an obligation to demolish the structure. Buyer shall be solely responsible for the expenses of demolition and waive any claims for demolition expenses from Seller.

3. **Taxes and Assessments.** All taxes and assessments due and payable at the time of Closing, including the December 2000 tax bill shall be paid by Seller prior to or at Closing. All taxes and special assessments that become due and payable after Closing, including the December 2001 tax bill shall be the responsibility of Buyer.

4. **Title Insurance.** Buyer shall obtain a commitment for title insurance issued by Harbor Title, for an amount not less than the purchase price guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment are, in the sole discretion of Buyer, deemed unreasonable, Seller shall have thirty (30) days from the date Seller is notified, in writing, of such unreasonableness of restriction and such unmarketability of title to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale, as herein provided, within ten (10) days of written notification thereof. If Seller fails to resolve such restrictions or remedy the title within the time above specified, or fails to obtain satisfactory title insurance, this Agreement will be terminated, at Buyer's option. The premium for the owner's title policy shall be paid by Buyer.

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, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Agreement, and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

6. Personal Property and Fixtures. All personal property and fixtures, which Seller wishes to remove, shall be removed on or before Closing. Any personal property left on the Premises shall be the property of Buyer, who may dispose of same.

7. Environmental Matters. Seller represents and warrants to Buyer that Seller has not disposed of any hazardous or toxic substances on or in the Premises. Such representation and warranty shall be deemed to have been made again by Seller as of the Closing. Seller agrees to indemnify Buyer and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages, and losses, including, but not limited to, reasonable attorneys' fees, resulting from any misrepresentation or breach of the warranty set forth in this paragraph, which representation and warranty shall survive the Closing.

8. Condition of Premises and Examination by Buyer. No implied warranties of habitability, quality, condition, fitness for a particular purpose, or any other implied warranties shall operate between Seller and Buyer, and Buyer expressly waives any and all such implied warranties. Buyer understands and agrees that the premises is taken "as is," subject to the express covenants, conditions and/or express warranties contained in this Agreement, also subject to the warranty of Seller that no hazardous substances have been placed on the premises. Buyer further says that it has personally inspected the premises and is satisfied with the condition of the land, and the buildings and improvements thereon, and that the property is being purchased as a result of such inspection and investigation and not due to any representations made by or on behalf of seller except for express warranties.

9. Real Estate Commission. Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

10. Closing. The closing date of this sale shall be on or before 60 days following the effective date of this Agreement ("Closing"). The Closing shall be conducted at the closing facilities of Harbor Title, 955 West Broadway, Muskegon, MI 49441, or at such other place as may be mutually agreed upon between the parties.

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

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

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

14. Costs. Seller shall be responsible to pay the Michigan transfer tax in the amount required by law and to pay for the obtaining and recording of any instrument, which must be recorded to clear title to the extent, required by this Agreement. Buyer shall pay for the cost of recording the warranty deed to be delivered at Closing, the closing fee and the title insurance premium. Each party shall pay their own attorney fees.

15. General Provisions.

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

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

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

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

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

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

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

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

i. **Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement.

WITNESSES:

Anata Bailey

Linda Robinson
Linda Robinson

SELLER

Bryan E. Carlson
Bryan E. Carlson

On: 11/5, 2001

Susan E. Carlson
Susan E. Carlson

On: 11/4/, 2001

BUYER: CITY OF MUSKEGON,
a Michigan municipal corporation

By Fred J. Nielsen
Fred J. Nielsen, Mayor

By Gail A. Kunding
Gail A. Kunding, City Clerk

Prepared by:
John C. Schrier
Parmenter O'Toole
175 W. Apple Avenue
P.O. Box 786
Muskegon, MI 49443-0786
Telephone: 231/722-5413

Date: November 27, 2001
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Request for Encroachment @ 1476 Getty

SUMMARY OF REQUEST:

ESP, business owner, at 1476 Getty has submitted the attached encroachment agreement form requesting your permission to install a 5' by 4' internally light sign on top of an existing pole in front of the aforementioned address.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the encroachment.

COMMITTEE RECOMMENDATION:

Artistic Neon & Signs Inc

181 S. Getty St. Suite B
Muskegon, MI 49442
(231) 722-6959

CLERK

OCT 19 2001

RECEIVED

Muhammed/Engineering Dept.
City Of Muskegon
993 Terrace St.
Muskegon, MI
49440

October 18, 2001

Muhammed,

1. I have enclosed per your request, a signed copy of the encroachment agreement. (The entire agreement should be on file in your office).
2. A copy of the insurance for ESP Wireless, naming City of Muskegon a certified holder and cancellation clause.
3. Check #1415 for \$100 is enclosed for the processing fee.
4. Drawing to show where sign will be located.

I believe this is what you need to review this encroachment agreement and to get approval for ESP to install their sign.

If anything additional is required please issue in writing to my office. Thank-you.

Sincerely,
Tonya Ream



ENCROACHMENT AGREEMENT AND PERMIT

RECEIVED

CITY OF MUSKEGON

AUG 22 2001

ENGINEERING DEPT.

THIS AGREEMENT is made and entered into this 27 day of November, 2001, by and between the CITY OF MUSKEGON, a municipal corporation (hereinafter called CITY), and ESP Wireless (hereinafter called LICENSEE).

RECITALS

1. LICENSEE proposes to install, repair or maintain improvements or facilities ("the encroachment"), in or abutting a street, alley, sidewalk, park, terrace or other property controlled or owned by the City of Muskegon, the encroachment being described as

4'x5' cabinet, Pole mount sign on existing pole

2. The City - owned or controlled property (herein "property") subject to the encroachment is described as:

[please insert a general description, and if required by the city, an accurate legal description]

Above
Sidewalk crossing in front of E.S.P. Wireless at

1476 Gettys St. Muskegon

3. The City is willing to grant such privilege upon the terms and conditions herein. This agreement shall constitute a permit under section 18-19 of the Code of Ordinances, but shall apply to any encroachment on public ways or property.

THEREFORE,

1. CITY does hereby grant unto LICENSEE the privilege of constructing, installing, maintaining, repairing, performing all necessary functions relating to the encroachment, and for that purpose to enter the property, for the term herein stated. This

privilege shall be effective upon the issuance of an encroachment permit, which shall be issued only after approval of this agreement by the City Commission and delivery to the City of the required evidence of insurance coverages.

This grant is subject to the following special conditions: None

2. That LICENSEE shall pay to the City for the privilege hereby granted the sum of one hundred & twenty five Dollars (\$125), such payment to be made upon the signing of this agreement to be dated as of the 27th day of November, 2021, to the City Treasurer of the City of Muskegon, and the privilege hereby granted shall continue for a period to terminate the first day of May, _____, unless sooner terminated as hereinafter provided.

3. INDEMNIFICATION. The LICENSEE shall indemnify and save harmless said GRANTOR of and from any liability for claims, damages, costs, expenses, or fees, including any attorney fees, or fines or awards brought against or charged to the city by any person, firm or corporation on account of or arising from the privilege hereby granted to LICENSEE or the activities of the LICENSEE related to the encroachment or this privilege. This indemnification obligation shall include all liabilities for environmental damage or releases of hazardous substances subject to any governmental or third party action. "Hazardous substance" is defined as any material constituting a prohibited or regulated substance under any governmental law, rule, statute or regulation in force at any time, including future times.

4. INSURANCE. LICENSEE shall at all times carry liability insurance in such amounts as are satisfactory to City, and issued by companies acceptable to the City, licensed in the State of Michigan, naming City as an additional insured on any such policy. LICENSEE will file with

City certificates or policies evidencing such insurance coverage. The insurance policies or certificates shall provide that the City shall be given thirty days written notice before a cancellation or change in coverage may occur. The types of coverage and coverage limits to be required shall be as follows:

See attached insurance.

5. BONDING. Before this agreement /permit becomes valid, LICENSEE shall file with the city a bond conforming with the requirements of any ordinance, and shall keep same in force during the entire term of this agreement.

6. The privilege hereby granted may be canceled and revoked by the CITY at any time upon giving said LICENSEE ___ days of written notice of such cancellation and revocation.

7. LICENSEE may surrender up the privilege hereby granted at any time upon giving notice in writing to the City ___ days prior to such surrender, provided, however, that upon the voluntary relinquishment or abandonment of this privilege, or upon cancellation or revocation thereof by the City, the LICENSEE shall remove any structure(s) erected upon, within or overhanging the area of encroachment and restore the property at LICENSEE'S expense and in a manner satisfactory to City and in default thereof shall be liable to City for any cost, damage or expense the City may sustain in such restoration.

8. That should said LICENSEE fail or refuse to conform to any of the conditions on its part to be performed hereunder, the privilege hereby granted shall immediately terminate and become null and void.

9. This agreement shall be binding upon the respective heirs, representatives, successors and assigns of the parties hereto.

Witnesses:

Linda Potter
Linda Potter

JoAnn Krukowski
JoAnn Krukowski

CITY OF MUSKEGON

Greg J. Miller
Mayor

And Dale A. Kundergen
Clerk

LICENSEE:

Will By

William Berg

← Sign

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
08/31/2001

PRODUCER JERVISS-FETHKE INSURANCE 71 W. WEBSTER MUSKEGON, MI 49441 231-722-2375		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	
INSURED WILLIAMS ENTERTAINMENT DBA ESP WIRELESS 1476 S GETTY MUSKEGON, MI 49442		INSURER A: AUTO OWNERS INSURER B: INSURER C: INSURER D: INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	42-339-763-00	05/12/01	05/12/02	EACH OCCURRENCE \$500.000
					FIRE DAMAGE (Any one fire) \$
					MED EXP (Any one person) \$
					PERSONAL & ADV INJURY \$
					GENERAL AGGREGATE \$
					PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

LIABILITY @ 1476 S GETTY, MUSKEGON, MI 49442 - INCLUDES SIGN ENCROACHMENT

CERTIFICATE HOLDER CITY OF MUSKEGON 993 TERRACE MUSKEGON, MI 49440	☒ ADDITIONAL INSURED; INSURER LETTER: A	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL REASONABLY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Michael Daka</i>
--	---	--

DATE (MM/DD/YY)
08/31/2001

PRODUCER JERVISS-FETHKE INSURANCE 71 W. WEBSTER MUSKEGON, MI 49441 231-722-2375		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	
INSURED WILLIAMS ENTERTAINMENT DBA ESP WIRELESS 1476 S GETTY MUSKEGON, MI 49442	INSURER A: AUTO OWNERS		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO- JECT ☐ LOC	42-339-763-00	05/12/01	05/12/02	EACH OCCURRENCE	\$ 500.000
	FIRE DAMAGE (Any one fire)				\$	
	MED EXP (Any one person)				\$	
	PERSONAL & ADV INJURY				\$	
	GENERAL AGGREGATE				\$	
					PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS 	RECEIVED CITY OF MUSKEGON SEP 05 2001			COMBINED SINGLE LIMIT (Ea accident)	\$
				BODILY INJURY (Per person)	\$	
				BODILY INJURY (Per accident)	\$	
				PROPERTY DAMAGE (Per accident)	\$	
	GARAGE LIABILITY ☐ ANY AUTO 	MUSKEGON CITY CITY OF MUSKEGON SEP 05 2001			AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY:	EA ACC \$ AGG \$
	EXCESS LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	gives to Cynthia Poirer in the - 11/13/01 MST			WC STATU- TORY LIMITS	OTH- ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

LIABILITY @ 1476 S GETTY, MUSKEGON, MI 49442 - INCLUDES SIGN ENCROACHMENT

CERTIFICATE HOLDER	X	ADDITIONAL INSURED; INSURER LETTER:	A	CANCELLATION
---------------------------	----------	--	----------	---------------------

CITY OF MUSKEGON
993 TERRACE
MUSKEGON, MI 49440

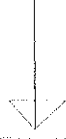
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~ADVISE YOU BY MAIL~~ 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25-S (7/97)

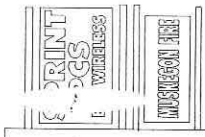
© ACORD CORPORATION 1988

4x5 INTERNALLY LITE SIGN



7' from bldg to pole
11' from pole to road

NORTH SIDE

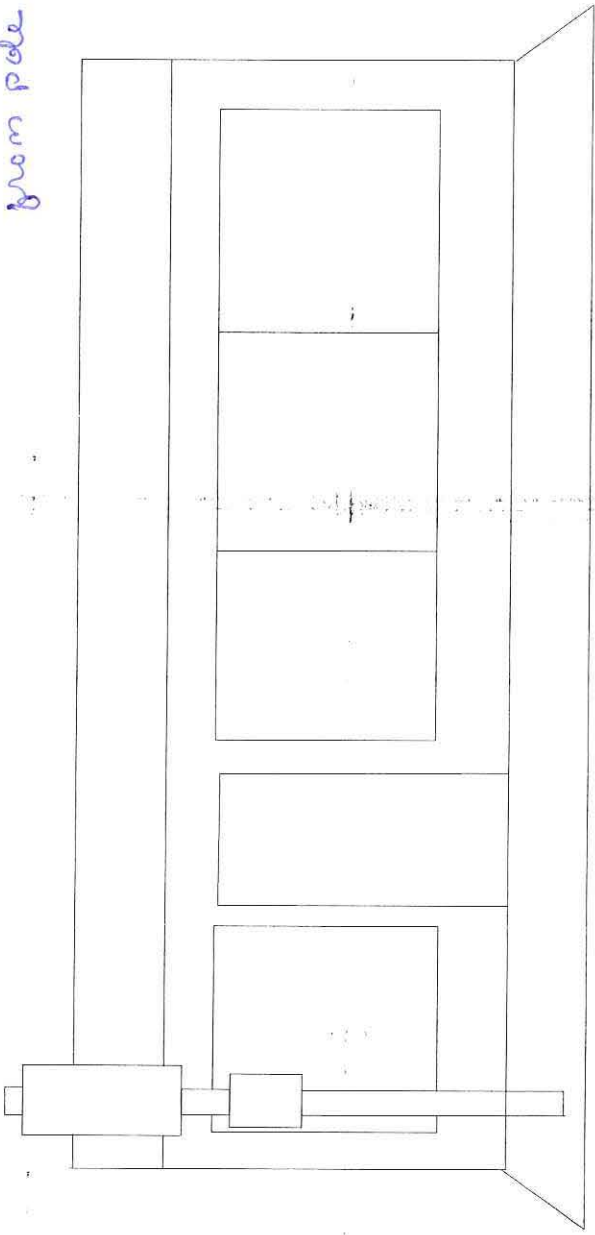


7ft



11'

from pole to road



ARTISTIC NEON & SIGNS 10-00

PH. 231-722-6959
181 S. GETTY SUITE B
MUSKEGON, MI 49442

74-1170/724
056614

1415

DATE Oct. 18, 2001

PAY TO THE
ORDER OF

City of Muskegon

\$ 100 -

One hundred

DOLLARS



SSB

SHELBY STATE BANK

MEMO

J. Ream

MP

⑆072411708⑆ 1415 ⑈056614⑈

Commission Meeting Date: November 27, 2001

Date: November 19, 2001
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department *CBC*
RE: Public Hearing for Resolution for Class C Liquor License for Theodore C. Fricano

SUMMARY OF REQUEST: To hold a public hearing on the request for a Class C Liquor License for Theodore C. Fricano and approve the attached resolution. The request is necessary due to a lack of available liquor licenses in the City of Muskegon. The Liquor Control Code allows for additional liquor licenses within Downtown Development Authority Districts under certain conditions.

FINANCIAL IMPACT: Approval of the liquor license will allow for a new restaurant in the downtown area of Muskegon, which will ultimately result in increased revenue for the City.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold a public hearing and approve the attached resolution.

COMMITTEE RECOMMENDATION: The Downtown Development Authority will hold a public hearing on this issue on November 20, 2001 and will forward a recommendation to the City Commission.

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN**

RESOLUTION NO. 2001-138(a)

A resolution concerning the issuance of a Development District On Premise Liquor License pursuant to Section 521 of the Liquor Control Code of 1998.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

1. Theodore C. Fricano has applied for a Development District On Premise liquor license for the premises at 1050 W. Western Avenue, known as the Hartshorn Building, formerly known as Waterfront Centre.
2. It is required that the Downtown Development Authority and the City Commission approve the issuance of such license before application may be made to the Michigan Liquor Control Commission.
3. A hearing was held on November 20, 2001, at a regular meeting of the DDA, and the said hearing was publicly noticed in The Muskegon Chronicle, and mailed to the neighborhood association involved, as well as the applicant. Public notice was determined by the DDA to be sufficient.
4. A hearing was held November 27, 2001, at the regular meeting of the City Commission. Notice was mailed and published and is deemed satisfactory.

DDA Findings

The DDA found the following facts to be true, based upon the application and the materials placed before the DDA in the public hearing:

1. The business shall be a full service restaurant, which prepares food on the premises, and shall be open to the public.
2. The business will be open for food service not less than ten (10) hours per day five (5) days per week.
3. At least 50% of the gross receipts of the business will be derived from the sale of food for consumption on the premises. "Food" does not include beer or wine.
4. The business has dining facilities that will seat more than twenty-five (25) persons.

5. The business is located in the Downtown Development Authority's Development District, which has a population of less than 50,000. The District is duly established under 1975 PA 197.
6. The DDA, after hearing, has found that the issuance of the license will prevent further deterioration within the Development District and will promote economic growth within the Development District.
7. The DDA, after public hearing, held after notice on November 20, 2001, has approved the issuance of the said Development District On Premise Liquor license.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

The City Commission has reviewed the findings of the DDA and held its own hearing, and concurs with all the findings of the Downtown Development Authority, and approves, in concurrence with the Authority, that the license should be issued to the applicant at 1050 W. Western Avenue, the premises known as the Hartshorn Centre, formerly known as Waterfront Centre. The City Commission recommends to the Liquor Control Commission the issuance of the said requested license.

This resolution passed.

Ayes Schweifler, Shepherd, Spataro, Aslakson, Benedict, Nielsen

Nays None

CITY OF MUSKEGON

By Gail A. Kunderger
Gail A. Kunderger, City Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission, held on November 27, 2001. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kunderger
Gail A. Kunderger, City Clerk

**CITY OF MUSKEGON
DOWNTOWN DEVELOPMENT AUTHORITY
MUSKEGON COUNTY, MICHIGAN**

RESOLUTION NO. _____

A resolution approving the issuance by the Liquor Control Commission of a Development District On Premise liquor license to Theodore C. Fricano pursuant to Sections 521 of the Liquor Control Code of 1998.

The DDA hereby RESOLVES:

Recitals

1. Theodore C. Fricano has applied for a Development District On Premise liquor license for the premises at 1050 W. Western Avenue known as the Hartshorn Building, formerly known as Waterfront Centre.
2. It is required that the Downtown Development Authority and the City Commission approve the issuance of such license before application may be made to the Michigan Liquor Control Commission.
3. A hearing was held on November 20, 2001, at a regular meeting of the DDA, and the said hearing was publicly noticed in The Muskegon Chronicle, and mailed to the neighborhood association involved, as well as the applicant. Public notice was determined by the DDA to be sufficient.

Findings

The DDA finds the following facts to be true, based upon the application and the materials placed before the DDA in the public hearing:

1. The business shall be a full service restaurant, which prepares food on the premises, and shall be open to the public.
2. The business will be open for food service not less than ten (10) hours per day five (5) days per week.
3. At least 50% of the gross receipts of the business will derived from the sale of food for consumption on the premises. "Food" does not include beer or wine.
4. The business has dining facilities that will seat more than twenty-five (25) persons.
5. The business is located in the Downtown Development Authority's Development District, which has a population less than 50,000. The District is duly established under 1975 PA

NOTICE OF PUBLIC HEARINGS

CITY OF MUSKEGON
COUNTY OF MUSKEGON, MICHIGAN

CLASS "C" LIQUOR LICENSE AT THE HARTSHORN CENTER,
FORMERLY KNOWN AS WATERFRONT CENTER
1050 W WESTERN AVENUE

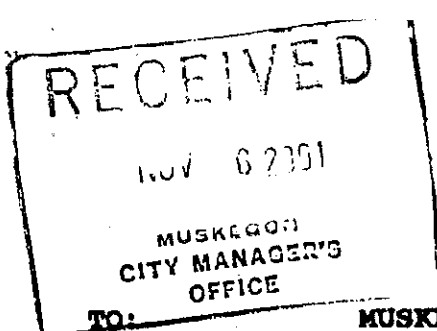
TO ALL INTERESTED PERSONS IN THE CITY OF MUSKEGON:

PLEASE TAKE NOTICE that two public hearings are scheduled to determine whether the City of Muskegon and its Downtown Development Authority shall approve the issuance of a class "C" (on premises) liquor license for a restaurant to be located at the Hartshorn Center at the above address in the City of Muskegon. The hearings are scheduled:

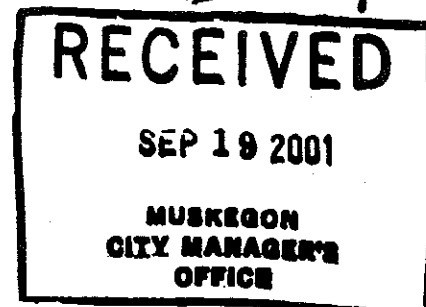
Before the Downtown Development Authority on November 20, 2001 at 4:00 p.m. in the Conference Room 103, Muskegon City Hall, 933 Terrace Street, Muskegon, MI 49440.

Before the City Commission on November 27, 2001 at 5:30 p.m. in the City Commission Chambers, Muskegon City Hall, 933 Terrace Street, Muskegon, MI 49440.

Any comments may be made at the hearing or by mail received prior to the hearing.



September 19, 2001



TO: MUSKEGON CITY COUNCIL
FROM: MICHIGAN LIQUOR CONTROL COMMISSION
SUBJECT: DEVELOPMENT DISTRICT ON PREMISES LICENSES

This is information relative to the new type of on premises license created by Act No. 440 of the Public Acts of 1996, being section 1521 of the Michigan Liquor Control Code of 1998, being NCL 436.1521(1) (formerly known as (f/k/a) Section 436.17k(1)).

436.1521(1) of the Michigan Compiled Laws provides that in addition to on premises quota licenses and on premises resort licenses, the Commission may issue not more than 50 Tavern or Class C licenses to persons operating certain qualifying businesses located in development districts.

Development districts are defined in subsection (6)(a) of section 436.1521 of the Michigan Compiled Laws as follows:

" . . . (i) An authority district established under the tax increment finance authority act, Act No. 450 of the Public Acts of 1980, being sections 125.1801 to 125.1830 of the Michigan Compiled Laws."

(ii) An authority district established under the local development financing act, Act No. 281 of the Public Acts of 1986, being section 125.2151 to 125.2174 of the Michigan Compiled Laws."

✓ (iii) A downtown district established under Act No. 197 of the Public Acts of 1975, being sections 125.1651 to 125.1681 of the Michigan Compiled Laws."

(iv) A principal shopping district established under Act No. 120 of the Public Acts of 1961, being sections 125.981 to 125.987 of the Michigan Compiled Laws, before January 1, 1996."

The conditions that must be met prior to the issuance of a development district license contained in subsection (1) of 436.1521 of the Michigan Compiled Laws are as follows:

" . . . (a) The business is a full service restaurant, is open to the public, and prepares food on the premises."

(b) The business is open for food service not less than 10 hours per day, 5 days per week."

Page 3
September 19, 2001
Development District Licenses

- (5) A copy of the resolution passed by the local legislative body which concurs in the findings of the authority for issuance of a license to the applicant at a specific location.

Once these documents are received, Liquor Control Commission license application forms and instructions will be mailed to the applicant and the customary licensing process will be implemented. This process will include receipt of recommendations from both the local legislative body and the local law enforcement agency.

It is important to note that the Liquor Control Commission may issue not more than 50 Tavern or Class C licenses in development districts throughout the State and applications may be considered by the Liquor Control Commission without regard to the order in which the applications are received.

The provisions of 436.1521(4) of the Michigan Compiled Laws further prohibit the issuance of a Specially Designated Merchant license, a Specially Designated Distributor license or any other license that allows the sale of alcoholic liquor for consumption off the premises. Act 440 of the Public Acts of 1996 further expanded the definition of a Brewpub license to allow the beer produced at the premises to be sold for consumption off the premises. Therefore, the provisions of 436.1521(4) of the Michigan Compiled Laws prohibit the issuance of a Brewpub license in conjunction with an on premises license issued under this section 1521(1).

Licenses issued under the provisions of 436.1521(1) of the Michigan Compiled Laws may transfer ownership and may transfer location within the development district in which originally issued. The same conditions and procedures outlined above will be applicable to a transfer location of licenses issued under 436.1521 of the Michigan Compiled Laws within the development district.

If you have any further questions, please contact the Escrow/Quota Unit of the Licensing Division at (517)-322-1400.

A:\DEVDLIC2.B17

(7) The commission may issue the licenses under this section without regard to the order in which the applications for the licenses are received.

(8) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(9) As used in this section:

(a) "Development district" means any of the following:

(i) An authority district established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(ii) An authority district established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(iii) A downtown district established under 1975 PA 197, MCL 125.1651 to 125.1681.

(iv) A principal shopping district established under 1961 PA 120, MCL 125.981 to 125.987, before January 1, 1996.

(b) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(c) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

P.A.1998, No. 58, § 521, Imd. Eff. April 14, 1998. Amended by P.A.1998, No. 282, Imd. Eff. July 27, 1998.

Historical and Statutory Notes

P.A.1998, No. 282, in subsec. (1), in the introductory paragraph, inserted "and resort economic development"; deleted subsec. (1)(f), which read:

"The business demonstrates to the commission that an escrowed license is not readily available in any local unit of government in which the development district is located."

P.A.1998, No. 282, also, inserted subsec. (2); redesignated former subsecs. (2) to (4) as sub-

secs. (3) to (5), respectively; in subsec. (4), added the second sentence; inserted subsecs. (6) and (8); and redesignated former subsecs. (5) and (6) as subsecs. (7) and (9), respectively.

Prior Laws:

P.A.1933, Ex.Sess., No. 8, § 17k.

C.L.1979, § 436.17k.

P.A.1996, No. 440, § 1.

Library References

Intoxicating Liquors ⇐57.1.

WESTLAW Topic No. 223.

C.J.S. Intoxicating Liquors § 104.

436.1522. Banquet facility permits; issuance to on-premise licensees

Sec. 522. (1) The commission may issue 1 banquet facility permit to an on-premise licensee, as an extension of that on-premise license, for the serving of

alcohol
the nu
any lo
sched
not be
tion th
facility

(2) '
renew
admin
\$600.0

(3) '
license
sion s

(a) '
that th
genera

(b) '
gross
nonalc

(4) '
provid
public
premis
health

(5) '
is app
unit of
P.A.199
by P.A.

P.A.19
"\$600.0

Intoxi
WEST
C.J.S.

436.1

Sec.
ment c
penal
ordina
defens

RECEIVED
NOV 6 2001
MUSKEGON
CITY MANAGER'S
OFFICE

September 19, 2001

Bryon
RECEIVED
SEP 19 2001
MUSKEGON
CITY MANAGER'S
OFFICE

TO: MUSKEGON CITY COUNCIL
FROM: MICHIGAN LIQUOR CONTROL COMMISSION
SUBJECT: DEVELOPMENT DISTRICT ON PREMISES LICENSES

This is information relative to the new type of on premises license created by Act No. 440 of the Public Acts of 1996, being section 1521 of the Michigan Liquor Control Code of 1998, being MCL 436.1521(1) (formerly known as (f/k/a) Section 436.17k(1).

436.1521(1) of the Michigan Compiled Laws provides that in addition to on premises quota licenses and on premises resort licenses, the Commission may issue not more than 50 Tavern or Class C licenses to persons operating certain qualifying businesses located in development districts.

Development districts are defined in subsection (6)(a) of section 436.1521 of the Michigan Compiled Laws as follows:

". . .(i) An authority district established under the tax increment finance authority act, Act No. 450 of the Public Acts of 1980, being sections 125.1801 to 125.1830 of the Michigan Compiled Laws."

(ii) An authority district established under the local development financing act, Act No. 281 of the Public Acts of 1986, being section 125.2151 to 125.2174 of the Michigan Compiled Laws."

✓(iii) A downtown district established under Act No. 197 of the Public Acts of 1975, being sections 125.1651 to 125.1681 of the Michigan Compiled Laws."

(iv) A principal shopping district established under Act No. 120 of the Public Acts of 1961, being sections 125.981 to 125.987 of the Michigan Compiled Laws, before January 1, 1996."

The conditions that must be met prior to the issuance of a development district license contained in subsection (1) of 436.1521 of the Michigan Compiled Laws are as follows:

". . .(a) The business is a full service restaurant, is open to the public, and prepares food on the premises."

(b) The business is open for food service not less than 10 hours per day, 5 days per week."

September 19, 2001

Development District On Premises Licenses

(c) At least 50% of the gross receipts of the business are derived from the sale of food for consumption on the premises, excluding beer and wine."

(d) The business has dining facilities to seat not less than 25 persons.

(e) The business is located in a development district with a population of not more than 50,000 in which the authority, after a public hearing, has found that the issuance of the license would prevent further deterioration within the development district and promote economic growth within the development district. The Commission shall not issue the license unless the local unit of government within which the authority is located, after holding a public hearing, passes a resolution concurring in the findings of the authority.

(f) The business demonstrates to the Commission that an escrowed license is not readily available in any local unit of government in which the development district is located."

Initial applications for on premises licenses under the provisions of 436.1521(1) of the Michigan Compiled Laws will be made to the development district where the proposed business is to be located and not to the Liquor Control Commission offices. The Liquor Control Commission will not maintain lists of interested applicants nor submit names of the applicants to the development districts for consideration.

In order for the Liquor Control Commission to implement the licensing investigation process for applications under the provisions of 436.1521(1) of the Michigan Compiled Laws, the following documents must be received:

- (1) Written verification from the development authority identifying the statutory provisions under which it was established and certification that its population is not more than 50,000.
- (2) A copy of the notice of public hearing held by the development district.
- (3) A copy of written findings of the development district which state that the issuance of the license to the applicant at a specific location would prevent further deterioration within the development district and promote economic growth.
- (4) A copy of the notice of public hearing held by the local legislative body.

Page 3
September 19, 2001
Development District Licenses

- (5) A copy of the resolution passed by the local legislative body which concurs in the findings of the authority for issuance of a license to the applicant at a specific location.

Once these documents are received, Liquor Control Commission license application forms and instructions will be mailed to the applicant and the customary licensing process will be implemented. This process will include receipt of recommendations from both the local legislative body and the local law enforcement agency.

It is important to note that the Liquor Control Commission may issue not more than 50 Tavern or Class C licenses in development districts throughout the State and applications may be considered by the Liquor Control Commission without regard to the order in which the applications are received.

The provisions of 436.1521(4) of the Michigan Compiled Laws further prohibit the issuance of a Specially Designated Merchant license, a Specially Designated Distributor license or any other license that allows the sale of alcoholic liquor for consumption off the premises. Act 440 of the Public Acts of 1996 further expanded the definition of a Brewpub license to allow the beer produced at the premises to be sold for consumption off the premises. Therefore, the provisions of 436.1521(4) of the Michigan Compiled Laws prohibit the issuance of a Brewpub license in conjunction with an on premises license issued under this section 1521(1).

Licenses issued under the provisions of 436.1521(1) of the Michigan Compiled Laws may transfer ownership and may transfer location within the development district in which originally issued. The same conditions and procedures outlined above will be applicable to a transfer location of licenses issued under 436.1521 of the Michigan Compiled Laws within the development district.

If you have any further questions, please contact the Escrow/Quota Unit of the Licensing Division at (517)-322-1400.

A:\DEVDLIC2.B17

P.A.1952, No. 150, § 1.
 P.A.1955, No. 42, § 1.
 P.A.1955, No. 126, § 1.
 P.A.1957, No. 275, § 1.
 P.A.1960, No. 151, § 1.
 P.A.1962, No. 35, § 1.
 P.A.1964, No. 172, § 1.
 P.A.1965, No. 39, § 1.
 P.A.1966, No. 196, § 1.
 C.L.1970, § 436.17.
 P.A.1976, No. 416, § 1.
 P.A.1976, No. 417, § 1.
 P.A.1976, No. 418, § 1.
 P.A.1977, No. 2, § 1.
 P.A.1978, No. 6, § 1.
 P.A.1979, No. 74, § 1.
 C.L.1979, § 436.17.

P.A.1980, No. 6, § 1.
 P.A.1980, No. 185, § 1.
 P.A.1980, No. 302, § 1.
 P.A.1981, No. 187, § 1.
 P.A.1983, No. 21, § 1.
 P.A.1983, No. 81, § 1.
 P.A.1985, No. 123, § 1.
 P.A.1986, No. 7, § 1.
 P.A.1987, No. 191, § 1.
 P.A.1988, No. 207, § 1.
 P.A.1989, No. 118, § 1.
 P.A.1992, No. 136, § 1.
 P.A.1994, No. 185, § 1.
 P.A.1995, No. 113, § 1.
 P.A.1995, No. 138, § 1.
 P.A.1996, No. 71, § 1.

American Law Reports

Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors, 7 ALR3d 809.
 Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associates, 36 ALR3d 1301.
 Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold, 46 ALR3d 369.
 Security interests in liquor licenses, 56 ALR4th 1131.

Law Review and Journal Commentaries

First amendment freedoms: Annual survey of Michigan law 1975. Peter M. Alter, Ellen J. Alter, 22 Wayne L.Rev. 365 (1976).

Library References

Intoxicating Liquors ⇨59(1).
 WESTLAW Topic No. 223.
 C.J.S. Intoxicating Liquors § 95.

Notes of Decisions

State-owned lands 1

1. State-owned lands

Liquor control commission may not issue license for premises constituting land of which state is fee owner, even though land is under lease to another. Op.Atty.Gen., 1951-52, No. 1321, p. 129.

Real estate property acquired by Huron-Clinton metropolitan authority was not state-owned within the meaning of that term as used in

P.A.1949, No. 174, which prohibited the issuance of licenses for sale of alcoholic liquor on state owned lands. Op.Atty.Gen.1949-50, No. 1227, p. 551.

P.A.1933, Ex.Sess., No. 8, § 17 as amended by P.A.1949, No. 174, prohibited the liquor control commission from issuing licenses for use on state owned lands and such licenses in existence on the effective date of the amendatory act could not be renewed or transferred for use thereon. Op.Atty.Gen.1949-50, No. 1024, p. 288.

436.1521. Tavern or class "C" licenses, issuance

Sec. 521. (1) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under section 531(1), and the resort and resort economic development licenses authorized in section 531(2), (3), and (4), the commission may issue not more than 50 tavern or class C licenses to persons who operate businesses that meet all of the following conditions:

(a) The business is a full service restaurant, is open to the public, and prepares food on the premises.

(b) The business is open for food service not less than 10 hours per day, 5 days a week.

(c) At least 50% of the gross receipts of the business are derived from the sale of food for consumption on the premises. For purposes of this subdivision, food does not include beer and wine.

(d) The business has dining facilities to seat not less than 25 persons.

(e) The business is located in a development district with a population of not more than 50,000, in which the authority, after a public hearing, has found that the issuance of the license would prevent further deterioration within the development district and promote economic growth within the development district. The commission shall not issue the license unless the local unit of government within which the authority is located, after holding a public hearing, passes a resolution concurring in the findings of the authority.

(2) The individual signing the application for the license shall state and demonstrate that the applicant attempted to secure an appropriate on-premise escrowed license or quota license issued under section 531 and that, to the best of his or her knowledge, an on-premise license or quota license issued under section 531 is not readily available within the local unit of government in which the applicant proposes to operate.

(3) If in any licensing year the sale of food for consumption on the premises of the business represents less than 50% of the gross receipts for the business, the commission, after due notice and proper hearing, shall revoke the license issued under subsection (1).

(4) Not more than 1 license shall be issued under subsection (1) to any individual, partnership, limited partnership, limited liability company, corporation, or any combination of any of the above, including stockholders, general partners, or limited partners. A license issued under this section is transferable as to ownership or location only within the development district.

(5) The commission shall not issue a specially designated merchant license, specially designated distributor license, or any other license that allows the sale of alcoholic liquor for consumption off the premises in conjunction with a license issued under subsection (1) or at the premises for which a license has been issued under subsection (1).

(6) The commission shall not issue a license under this section if the local governmental unit within which the development district is located has not issued all appropriate on-premise licenses available under section 531(1) or if an appropriate on-premise escrowed license is readily available in any local unit of government in which the development district is located. The commission shall not issue more than 2 licenses authorized under this section in any city or municipality with a population greater than 50,000. If an applicant's proposed location is within more than 1 development district, the applicant shall obtain the approval of both or all of the applicable local units of government or development districts.

(7) The commission may issue the licenses under this section without regard to the order in which the applications for the licenses are received.

(8) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(9) As used in this section:

(a) "Development district" means any of the following:

(i) An authority district established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(ii) An authority district established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(iii) A downtown district established under 1975 PA 197, MCL 125.1651 to 125.1681.

(iv) A principal shopping district established under 1961 PA 120, MCL 125.981 to 125.987, before January 1, 1996.

(b) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(c) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

P.A.1998, No. 58, § 521, Imd. Eff. April 14, 1998. Amended by P.A.1998, No. 282, Imd. Eff. July 27, 1998.

Historical and Statutory Notes

P.A.1998, No. 282, in subsec. (1), in the introductory paragraph, inserted "and resort economic development"; deleted subsec. (1)(f), which read:

"The business demonstrates to the commission that an escrowed license is not readily available in any local unit of government in which the development district is located."

P.A.1998, No. 282, also, inserted subsec. (2); redesignated former subsecs. (2) to (4) as sub-

secs. (3) to (5), respectively; in subsec. (4), added the second sentence; inserted subsecs. (6) and (8); and redesignated former subsecs. (5) and (6) as subsecs. (7) and (9), respectively.

Prior Laws:

P.A.1933, Ex.Sess., No. 8, § 17k.

C.L.1979, § 436.17k.

P.A.1996, No. 440, § 1.

Library References

Intoxicating Liquors §57.1.

WESTLAW Topic No. 223.

C.J.S. Intoxicating Liquors § 104.

436.1522. Banquet facility permits; issuance to on-premise licensees

Sec. 522. (1) The commission may issue 1 banquet facility permit to an on-premise licensee, as an extension of that on-premise license, for the serving of

alcoh
the n
any l
sched
not b
tion t
facilit

(2)
renew
admin
\$600.

(3)
licens
sion :

(a)
that tl
gener.

(b)
gross
nonal

(4)
provic
public
premi
health

(5)
is app
unit o
P.A.19
by P.A.

P.A.1
"\$600.0

Intox
WES'
C.J.S.

436.1

Sec.
ment
penal
ordina
defens

Date: November 13, 2001
To: Honorable Mayor and City Commission
From: DPW – Water Filtration
RE: Engineering/Design consultant for Water Filtration Plant project

SUMMARY OF REQUEST:

To enter into an engineering/design and construction oversight contract with TetraTech MPS for Water Filtration Plant improvements.

FINANCIAL IMPACT:

The project cost, including construction oversight, is \$717,000.

BUDGET ACTION REQUIRED:

Engineering/Design costs to be paid through existing water revenue bonds.

STAFF RECOMMENDATION:

Recommend the Mayor and City Commission endorse and enter into an engineering/design and construction oversight contract with TetraTech MPS for the Water Filtration Plant.

MEMORANDUM

11/6/01

TO: ROBERT KUHN, DIRECTOR OF PUBLIC WORKS

FROM: ROBERT VENEKLASSEN, WATER FILTRATION SUPERVISOR

RE: ENGINEERING/DESIGN SOLICITATION – FILTRATION PLANT

Engineering/Design qualifications and proposal statements were requested for the remaining projects identified in the 1991 Reliability Study. I have included a copy of the solicitation document.

PROJECTS IDENTIFIED

The solicitation identified six projects of differing scope and construction oversight. The projects and a brief description of each follows:

- Door replacement – install corrosion resistant aluminum and/or fiberglass reinforced plastic (FRP) doors to replace existing steel doors.
- High and Low Service pumps – installation of pumps in the intake-shorewell and the 1972 high service station. This is to complete the transition begun in the 1970's to eliminate the use of the 1928 old pumphouse as it is vulnerable to ground water.
- Rehabilitation of 10 filters – The filters have not undergone underdrain evaluation and media replacement since 1964. Media replacement is recommended every thirty years.
- Rehabilitation of the Sedimentation Basins – these units have been in service since 1937. The mixers and flocculators are not functioning properly and are in need of replacement.
- Reliability Study – This study is required by MDEQ every ten years. This document is the tool used to plan short and long term capital improvements.
- Discharge elimination – This project is mandated by MDEQ to end treatment process discharges to Lake Michigan by 4/1/2005.

REQUEST FOR QUALIFICATIONS/PROPOSALS (RFQ/P)

Six engineering/design firms expressed interest in this project with three of those firms submitting proposals. Those being: 1) Consoer Townsend Environdyne Engineers, Inc. of Flint, MI, 2) Fishbeck, Thompson, Carr & Huber of Grand Rapids, MI, 3) TetraTech MPS of Grand Rapids, MI.

The proposals submitted are as follows:

Firm	Proposal cost	Solids Handling (additional cost)
1. Consoer Townsend Environdyne	\$840,000	Included in original proposal
2. Fishbeck, Thompson, Carr & Huber	\$949,285	\$292,600
3. TetraTech MPS	\$582,000	\$135,000

Total engineering fees are:

1. Consoer Townsend Environdyne (CTE)	\$840,000
2. Fishbeck, Thompson, Carr & Huber (FTC&H)	\$1,241,885
3. TetraTech MPS (TTMPS)	\$717,000

The initial proposals were reviewed and a request for additional information regarding treatment residuals solids handling was made of the three firms. The three firms were then requested to participate in an interview. The interview included an introduction of the firm's staff involved in the project, a presentation of their understanding and approach to the project, and a short question/answer period. The interviews were attended by the City Manager, the Director of Public Works, the City Engineer, and Water Plant Supervisor, Chief Operator, and Maintenance Operator.

Following the interviews the City team evaluated the qualifications, proposals, and presentations.

RECOMMENDATION

TetraTech MPS was formerly known as McNamee, Porter & Seeley, Inc. prior to joining with TetraTech in 2000. In their capacity as McNamee, Porter, & Seeley they were selected to perform the 1991 Reliability Study, the 1993 Instrumentation & Control Project, and the 1998 Multi-Purpose Building Projects at the Water Filtration Plant.

TetraTech MPS was the firm chosen by the City staff to perform the engineering/design and construction oversight for this project.

Based on their past experience, the City Staff's selection, and the attractive cost submitted; it is my recommendation the Mayor and City Commission endorse and enter into a contract for engineering/design for the Water Filtration Plant projects identified at a cost of \$717,000.

**City of Muskegon
Water Filtration Plant
1900 Beach Street
Muskegon, MI 49441**

REQUEST FOR QUALIFICATIONS/PROPOSALS

The City of Muskegon is seeking a consultant to perform engineering/design services for the rehabilitation of the conventional sedimentation basins, rapid sand filters, and low and high service pumps at the Water Filtration Plant.

Included is a request for qualifications (RFQ) and proposals (RFP) for engineering design services for door replacement, high and low service pumping, rehabilitation of 10 rapid sand filters, rehabilitation of two conventional sedimentation basins, reliability study, washwater discharge elimination, construction oversight and project funding evaluation and alternatives.

If you have any questions regarding this request please contact Robert Veneklasen at (231) 724-4106, or submit them in writing to the following addresses:

City of Muskegon
Water Filtration Plant
1900 Beach Street
Muskegon, MI 49441
or
bob.veneklasen@postman.org

Please have all questions submitted no later than July 11, 2001. A pre-proposal meeting will be held at the Plant on Wednesday, July 18, 2001 at 2:00 PM.

If you are interested in providing engineering/design services; a statement of your professional qualifications accompanied by a cost proposal is requested.

All qualifications and proposals submitted pursuant to this request must be in the City Clerks Office prior to 2:00 PM on Tuesday, July 31, 2001.

Please provide a minimum of three copies of all materials submitted for review and evaluation.

PROJECT SCOPE

The services required are detailed engineering, design, construction oversight and funding for:

- Door replacement
- High and low service pumping
- Rehabilitation of 10 rapid sand filters
- Rehabilitation of two conventional sedimentation basins
- Reliability study
- Discharge elimination

The following items, as minimum, must be considered as part of the services.

DOORS

Door replacement in the following locations

1. Clairifier Building – E & W double exterior entrances
½ light
2. Headworks –
exterior
 E double entrance
 full light
 W double entrance
 full light
 Loading dock – door
 ½ light
interior
 both lab entrances
 full light
3. New Filters – E exterior double entrance
½ light
 Stairway – install existing window frame & glazing – remove louver
4. New Pumphouse passage – W exterior entrances (2)
½ light
5. New Pumphouse – N exterior entrance
½ light
 Double, panel-type, equipment doors
6. Intake Passageway- N and S exterior entrances
½ light

7. Intake Building – N exterior entrance incl. Windows & S exterior entrance
N door – full light
S door – ½ light
Double, panel-type, equipment doors
8. Old Pumphouse passage
W doors (2) – ½ light
E door – ½ light
9. Attic – S doors for roof access (2)
½ light

Doors to be constructed of Aluminum and/or Fiberglass Reinforced Plastic – frame and door with insulated glass in all lights. Install all locksets & key to existing. Install closers on all exterior doors with stops & hooks where appropriate. Install handicap opener on existing barrier free entrance.

PUMPS – low and high service

1. LOW SERVICE

- Evaluate needs and make recommendation
 - Number of pumps – 4 possible
 - Firm capacity and redundancy
- Valves – check
 - Evaluate existing and make recommendation
- Vibration Monitoring – interface with control system

2. HIGH SERVICE

- Evaluate needs and make recommendation
 - Number of pumps – 2 possible
 - Firm capacity and redundancy
- Valves
 - Operators – existing, evaluate and make recommendation
 - Checks Isolation – new and existing
 - Retrofit existing piping to accommodate
- C. Discharge piping
 - Looping of discharge header

FILTERS – Ten total, 6-old (1937) and 4-new (1964)

1. MEDIA

- Replacement
 - Appropriate to underdrain system
 - Achieve maximum capacity rating – desire 4.0 gpm/sqft

2. UNDERDRAINS

- Replacement – 6 old

 - Air-Water wash-evaluate alternatives and include recommendation and design

 - Existing lateral pipe type

- Evaluate – 4 new

 - Air-Water wash-evaluate alternatives and include recommendation and design

 - Make recommendation

3. SURFACE WASHES

- Replace – 6 old

- Evaluate and upgrade as necessary – 4 new

 - Replace supply piping as necessary

 - Include operation flags (rotation confirmation)

4. VALVES & ACTUATORS

- Evaluate actuators – all pneumatic

- Recommend

 - Replacement or rebuild

 - Pneumatic or electric

- Evaluate valve seats – butterfly

 - Make recommendation

 - include all associated valves (raw & settled)

5. PROTECTIVE COATING

- Remove existing from all surfaces (filter boxes & decks)

 - Interior and exterior

- Apply appropriate coatings

6. STRUCTURAL

- Repair any cracking or spalled concrete

 - Filters & walkways

- Replace all steel grating with fiberglass (FRP)

 - Filter and Pipe galleries

7. CONTROLS

- Interface all control requirements with existing system

8. RAILINGS

- Refurbish to original or replace with alternate of same design

9. SETTLED WATER CHANNEL/CONDUIT

Filter Influent

Repair all cracks & leaks

Re-construct/Repair where filter influent pipe intersects channel

10. OPERATION

All work is to be performed to insure no interruption of treatment processes or degradation of water supply or quality. Systems can be isolated dependent upon seasonal water demands.

SEDIMENTATION BASINS – 2 conventional

1. RAPID MIX

Evaluate mixer effectiveness – make compatible with new equipment

Identify alternative mixers - recommend

Tracer study – short circuiting

2. FLOCCULATION EQUIPMENT

Perform cost effectiveness analysis of equipment and/or baffles

Remove all existing and replace

3. SETTLING EQUIPMENT

Perform cost effectiveness analysis of settling equipment

Inclined plate, tube, or other

Capacity increase – detention/contact time (pretreatment)

MDEQ evaluation and quantification

4. BASIN FLOW & PIPING (WIERS) – influent and effluent

Evaluate for short circuiting and make recommendation

Tracer study

5. DRAINS

Evaluate drain valves – operators and seats

6. STRUCTURAL

Repair cracks and spalling

Special attention to common wall with old filters (1937)

7. ENTRANCES -- 4

Access Hatchways and valve vaults

Replace

Evaluate need for small removable gantry for equipment movement

Replace all fixed ladders

Replacement ladders in house – evaluate and install

8. 36" RAW WATER LINE
 - Inspect all joints (lead)
 - Protective coating – remove & replace or cover
9. SLUDGE REMOVAL
 - Evaluate for feasible, cost effective method
 - Mechanical versus manual
10. VALVING
 - Influent & Effluent – evaluate & make recommendation

RELIABILITY STUDY

The services required are for a Reliability Study for the Water Filtration Plant and distributions system with consideration of present and future expansions. The most recent study was performed in 1990. This information is available for review at the Water Filtration Plant.

The following items, as minimum, must be considered as part of the services:

1. Unit Operations
 - raw water intake
 - evaluate HDPE chemical application line
 - cost effective evaluation of cladding crib structure in copper
 - low service pumps and metering
 - flocculation and clarification (pretreatment)
 - filtration
 - disinfection
 - high service pumps and metering
 - chemical storage, transfer and application
 - hydraulic model of Plant and remote sites
2. System Storage – elevated and reservoir
 - City of Muskegon
 - Nims St.
 - Roberts St.
 - Marshall St.
 - altitude and supply valving
 - evaluate vault structures
 - evaluation of antenna systems and wire locations
 - Muskegon Township
 - evaluate need for second elevated storage tank
 - distribution piping modifications necessary to operate tank(s)
 - Interaction with wholesale customer systems
 - North Muskegon – study performed
 - County Northside & Southside – study performed

Roosevelt Park

3. Booster Stations – Harvey & Keating

Harvey

- Capacity – well & pumping

- Auxiliary Power

- Piping

 - vault piping and valving

 - by-pass valve operation

Keating

- evaluate structure and equipment

- identify functionality/needs/cost effectiveness

4. Distribution Systems

- Generate model of distribution system for 12" and above pipe – field verify

- Update existing hydraulic model

- Identify deficiencies and/or inadequacies

 - Create water demand projections (average, maximum and peak) – 20 year plan

- Provide system map including wholesale customer systems

 - incorporate existing location and sizes as can be provided by adjacent systems

 - Submit reports in bound form and on WaterCad 4.5 or most recent release

- Coordinate report to include latest ISO reports/data

- Evaluate installation of pipeline from Plant grounds North with river crossing second supply to North portion of distribution system

5. Evaluate compliance with Safe Drinking Water Act Requirements

- Compliance with Capacity requirements

 - Technical

 - Managerial

 - Financial

6. Power and Energy Consumption

7. Staffing – levels and recommended changes

- personnel roles and general job descriptions

8. Structures

- evaluate condition of structures

 - brick and mortar

 - roofing

 - limestone lentils, sills and artistic reliefs

 - concrete grade beams/foundations

9. Unattended or remote operation – winter months
 feasibility or operating Plant
 pumping only
 overnight – remote
 alarm conditions
 auto-dial – report
 lift stations
 10. Explore future options of digital connections to City Hall and Public Works
 Server computers
- This report is intended to be the basis for both short and long-term capital improvements plans.

DISCHARGE ELIMINATION

Identify the best alternative to eliminate all waste discharges from Plant to the watershed via the outfall. Cost effective evaluation, recommendation, and design to eliminate the following, and any other, discharges.

- Filter drain
- Filter surface wash
- Filter backwash
- Filter-to-waste
- Clairifier drain
- Sedimentation Basin drain
- Plant floor drains
- And any others that may be identified

1. Use of existing structures – as recommended in 1990 Reliability Study
 - Old Pumphouse conversion
 - Old Intake – use or demolish – make site reparations
 - Must meet the “filter backwash recycling rule”
2. Evaluate alternatives – sanitary sewer
 - Pipe availability & capacity
 - Effluent limits – discharge constituents
 - Cost of treatment – wastewater charge per MG
3. Combination of: sanitary sewer, holding tank, treated discharge
 - Meeting new permit requirements – dechlorination of discharge
 - Compliance with final effluent limitations in Part I.A.4
4. Solids handling
 - Sludge produced by filter backwash
 - Sludge produced by cleaning of Clairifiers and Sed. Basins
 - Lagoons – capacity evaluation
 - Mechanical dewatering – disposal

5. New discharge connection to 36" line (S. of Old Pumphouse)

Must meet all requirements as stipulated by MDEQ Surface Water Quality Division and Drinking Water and Radiological Protection Division.

Contacts: Grand Rapids Offices

MDEQ-SWQD – Thomas Berdinski

MDEQ-DWRP – David Timm

Thank you for your cooperation and consideration of this proposal.

QUALIFICATIONS

The consultant shall list and describe their expertise in the areas of the requested service. Include similar projects with a brief description and a client contact person. Staff that will be utilized on the project, if selected, must be identified along with their specific qualifications and professional certifications as required by Michigan law.

Extra consideration will be given to those firms that submit copies of prior studies for similar facilities.

EVALUATION

The owner will review the Qualifications and evaluate them based on the requested information and information provided. The City reserves the right to accept or reject any, and all, submittals.

CONSULTANT REQUIREMENTS

1. Provide Schedule
 - A. Engineering and design
 1. Twenty-six (26) weeks
 - B. Project schedule
 1. bidding
 2. construction
 3. project oversight
 - a. number of visits
 1. written progress reporting
 - a. quality of work
 - b. recommendation of payment
 1. thirty (30) day minimum
2. Bidding and Selection Recommendations
 - A. Provide advertisement
 1. costs incurred by consultant

- B. Bid evaluation and recommendation
 - 1. in accordance with City policies
- 3. Pre-Bid Meeting attendance
 - A. Provide minutes of meeting
 - 1. minutes to become addenda to contract
 - 2. answer contractors questions/concerns
 - 3. Training and O & M Manuals
 - a. identify whether "off-the-shelf" or "customized"
 - 1. include both as part of project
- 4. Project Finalization
 - A. "As Built" prints
 - 1. provided by design professional (consultant)
 - a. both reproducible and magnetic media
 - B. Staff training and start-up
 - 1. Consultant reviews and monitors
 - a. assure adequate level of service provided

DETAILS TO BE IDENTIFIED

- 1. Services to be provided including any others that may be needed
- 2. Project leader or contact person, and staff or sub-consultants to be used with related staff experience (not that of firm) including position or role on the project.
- 3. Cost estimate, including:
 - A. Projected man-hours by position for each task.
 - B. Hourly rates for each position to identify direct labor costs for each task.
 - C. Indirect labor cost using your firms multiplier (as determined by most recent audit for a similar project) and subcontracts compiled in the same manner.
 - D. Fixed Fee (profit) and expenses anticipated to determine a cost "not to exceed" for services to be provided.

TIME FRAMES, DELAYS, AND LIQUIDATED DAMAGES

Final plans and specifications for the project as defined must be submitted, in complete form, within the time frame indicated from the date of the contract execution. Include twenty-five (25) copies of the design (work to be performed) for contract preparation and bidding.

If the work is not completed within the stipulated time frame, the consultant may be liable for a sum of \$100.00 for each calendar day, for delays beyond the fixed time schedule. This will commence from the time stipulated for satisfactory completion until such work is satisfactorily completed and accepted. Any extensions of time required must be submitted to the City as the need occurs. Extensions of time may be granted for major changes in scope or for additional studies required outside the original scope of work.

EQUAL OPPORTUNITY EMPLOYMENT

Consultant must submit their firms Equal Opportunity Employment (EOE) plan which must meet or exceed the requirements of the City of Muskegon. Questions should be directed to the City's Affirmative Action Director, Mr. Ken James, who can be reached at: 231.724.6703.

EVALUATION

The owner will review the proposals and evaluate them based on the requested information and the information provided. The City reserves the right to accept or reject any, and all, proposals.

PERTINENT DATES

Proposals will be received at the City Clerks Office, c/o Gail Kunding, City Clerk, City Hall, 933 Terrace Street, PO Box 36, Muskegon, MI 49443-0536, on, or before, Tuesday, July 31, 2001, no later than 2:00 PM, and clearly marked, "Water Filtration Plant Improvements Proposal".

REQUIRED INSURANCE

The consultant, if selected, shall furnish the City a certificate of insurance evidencing the following coverages:

The Consultant will be required to comply with the following insurance and indemnity requirements:

1. Hold Harmless Agreements: To the fullest extent permitted by law,CONSULTANT agrees to defend, pay in behalf of, indemnify, and hold harmless the CITY, its elected and appointed officials, employees, volunteers and others working on behalf of the CITY against any and all claims, demands, suits, or loss, including any costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers, or others working on behalf of the CITY, by reason of personal injury, including bodily injury and death, property damage, including loss of use thereof, and/or the effects of or release of toxic and/or hazardous material which arises out of or is in any way connected or associated with this contract. The obligation to defend and hold harmless extends to CONSULTANT'S employees, agents, subcontractors, assigns and successors.

2. Consultant Insurance Requirements: CONSULTANT shall not commence work under this contract until obtaining the insurance required under this paragraph. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and Best Rated A VIII. All coverage shall be with insurance carriers acceptable to the CITY.
3. Workers' Compensation Insurance: The CONSULTANT shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employer's Liability coverage, in accordance with all applicable Statutes of the State of Michigan.
4. General Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract, commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$500,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability; (b) Products and Completed Operations; (c) Independent Contractor's Coverage; (d) Broad Form General Liability Extensions or equivalent.
5. Motor Vehicle Liability: The CONSULTANT shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan no-fault coverage, with limits of liability of not less than \$500,000 per occurrence or combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
6. Professional Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract and during the performance of all services Professional Liability Insurance covering all performances from the beginning of the consultant's services on a "claims made basis" and shall maintain coverage from commencement of this contract until six (6) months following completion of the consultant's work with limits of liability not less than \$500,000 per claim.
7. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insured": The CITY OF MUSKEGON, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

8. Cancellation Notice: Workers' Compensation Insurance, General Liability Insurance, Motor Vehicle Liability Insurance, and Professional Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) Days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: CITY OF MUSKEGON ENGINEERING DEPARTMENT.

9. Proof of Insurance Coverage: The CONSULTANT shall provide the CITY at the time the contracts are returned by him for execution, certificates and policies as listed below:

- a. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance
- b. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance
- c. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance
- d. Two (2) copies of Certificate of Insurance for Professional Liability Insurance
- e. If so requested, certified copies of all policies mentioned above will be furnished.

If any of the above coverage expires during the term of this contract, the CONSULTANT shall deliver renewal certificates and/or policies to the CITY at least ten (10) days prior to the expiration date.

CITY OF MUSKEGON
CONSULTING ENGINEERING AGREEMENT

WATER FILTRATION PLANT IMPROVEMENTS
PROJECT NAME

THIS AGREEMENT, made and entered into as of this 20th day of December, 2001, A.D., by and between Tetra Tech MPS, Consulting Engineers, of 3949 Sparks Drive SE, Suite 101, Grand Rapids, Michigan 49546, hereinafter referred to as the "CONSULTANT", And the City of Muskegon, a Public Body Corporation, hereinafter referred to as the CITY.

WITNESSETH:

WHEREAS, the CITY desires to engage the professional services of the CONSULTANT to perform certain engineering and other related services required in connection with the project as defined by the Work Plan Outline referred to as the "PROJECT".

WHEREAS, the CONSULTANT is willing to render the services desired by the CITY for the consideration hereinafter expressed; and

WHEREAS, the parties hereto have reached an understanding regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW THEREFORE, IT IS HEREBY AGREED by and between the parties hereto that:

I. THE CONSULTANT SHALL, perform professional services in connection with the PROJECT as hereinafter stated.

THE CONSULTANT SHALL, serve as the CITY'S Professional Representative in all of the Phases of the PROJECT, and will give consultation and advice to the CITY during the performance of his services as follows:

WORK PLAN OUTLINE

The work will consist of the following steps:

Scope of Services

STATEMENT OF UNDERSTANDING

We understand that the City of Muskegon desires to implement improvements to the Water Filtration Plant. The plant improvement project outlined in the Request For Proposals including: Door and Window Replacements; Filter Rehabilitation; High and Low Service Pumping Improvements; and Conventional Sedimentation Basin Improvements will include Preliminary and Final Design and Construction Phase Engineering Services. These improvements are as originally envisioned during the Reliability Study performed in 1990.

In addition, the City has requested that a new Reliability Study be performed to assess the adequacy and reliability of the current system. This study will involve utilization of the existing transmission/distribution system model that was originally developed by Tetra Tech MPS and has been expanded by the City Engineering Department. This study will investigate all water mains within the system approximately 8-inches and larger. In addition, the remote plant storage and pumping facilities will be investigated to outline a long-term capital improvement plan. As part of the reliability study, the plant processes will be investigated to determine any specific vulnerabilities not already anticipated as part of the current improvement program. If minor plant improvements are recommended during the reliability study, these will be included in the current improvement program. It is not anticipated that any major improvements to the plant will be recommended as part of the reliability

study. If a significant item is recommended, it will be included within a future capital improvement plan.

In addition, the RFP includes a Discharge Elimination Study that is necessary to identify the most appropriate alternative for reduction or elimination of the plant discharges in order to comply with anticipated discharge permit limitations. It is anticipated that the improvements identified within this study will be incorporated into the plant improvements project and that design and construction phase engineering services will be included. Our budget for engineering services for the design and construction phase services of this portion of the project assumes that the alternative involving demolition of the 1928 Pump Station and conversion into a reservoir and pump station with solids removal to the sanitary sewer and liquid decanting to the lake will be utilized. It is assumed that these improvements will be included in a single construction contract along with the plant improvements discussed in the first paragraph above.

PLANT IMPROVEMENT PROJECT

In response to the Request For Proposals, the plant improvement project includes design and construction, phase engineering services for the following scope:

Door and Window Replacements

The following doors and windows will be replaced as part of the plant improvement program. We anticipate obtaining pertinent information regarding each of the doors indicated below and providing this information as part of the contract bidding documents. Specific aspects of each of the doors will be included in the contract documents. We will perform research on the appropriate type of door replacement for each of the

doors and provide a recommendation for consideration prior to preparation of the contract documents. The following doors are included within the proposed construction program:

1. Clarifier Building

E & W double exterior entrances (1/2 light)

2. Headworks

Exterior

E double entrance (Full light)

W double entrance (Full light)

Loading dock - door (1/2 light)

Interior

Both lab. entrances (Full light)

3. New Filters

E exterior double entrance (1/2 light)

Stairway - install window frame & glazing,
remove louver

4. High Service Pump Passage

W exterior entrances (2) (1/2 light)

5. High Service Pump Building

N exterior entrance (1/2 light)

Double, panel-type, equipment doors

6. Intake Passageway

N and S exterior entrances (1/2 light)

7. Intake Building

N exterior entrance including

Windows S exterior entrance

N door - full light

S door - 1/2 light

Double, panel-type, equipment doors

8. Old Pumphouse passage

W doors (2) - 1/2 light

E door - 1/2 light

9. Attic

S doors for roof access (2) (1/2 light)

Low Service Pumping

We understand that it is the intent to provide firm low service pumping capacity for the entire plant within the existing low service pump station at the shore well. It is anticipated that the 1928 pump station will eventually be abandoned.

As part of this task, the existing pumping capacity will be determined and new pumping units will be specified so that the pump station will have firm capacity to pump through the treatment process. It will be determined whether replacement of the existing isolation and check valves is required. The proposed pumping units will be equipped with pump isolation and check valves as required.

New pumping will be equipped with vibration monitoring equipment and an appropriate type will be specified as part of the project improvement. Any permanently mounted vibration sensors will be connected to the plant SCADA system. The present SCADA system contains a processor input/output (I/O) panel in the low service pump station. During the original SCADA design, inputs and outputs were provided for future incorporation of four (4) additional low service pumps. I/O points in this panel were wired to terminal strips for ease of installation of future pumps and associated signals.

The electrical system will need to be revised in the station to accommodate additional pumps. Additional motor control centers and associated switchgear may need to be added to provide for this equipment as well as providing for redundancy and incorporation of the recently installed medium voltage generator for feeding power to low service pump station equipment.

As a point of information, during the original SCADA design, communication cables were installed from the main processor panel in the laboratory to the control panel in the 1928 pump station, then to the control panel in the 1963 low service pump station. In addition, a spare cable was installed directly to the control panel in the 63 pump station from the main processor panel in anticipation of the 28 pump station and control panel being demolished. Reconnection of the communication link between the main processor panel and the 63 low service control panel will result in near zero down time when this 28 pump station panel is demolished.

High Service Pumping

The project also includes equipping the 1973 High Service Pump Station with up to two additional pumps. The number and capacity of pumps will be as recommended in the system reliability study (described later). In addition, we understand that it is desired to provide isolation valves for each of the existing high service pumps and to potentially loop the discharge header so as to provide more flexibility in the piping system at the high service pump station.

In addition, an additional high service discharge main connection is desirable to connect with the existing dual 24-inch discharge mains from the 1928 Pump Station.

Replacement of the existing valve operators will be evaluated to determine whether replacement or refurbishing is necessary. The proposed valves will be equipped with similar types of actuators as are selected for the other valves in the station.

New pumping will be equipped with vibration monitoring equipment and an appropriate type will be

specified as part of the project improvement. Any permanently mounted vibration sensors will be connected to the plant SCADA system. The existing SCADA I/O panel in the high service pump station was designed to incorporate the addition of two additional medium voltage high service pumps. I/O points were included in this panel and pre-wired to terminal strips for future incorporation of new pumping equipment and associated signals.

Presently, two 2400V feeders from the existing outdoor switchgear feed the existing starters inside the high service pump station. Each feeder supplies power to three pumps (two pumps are existing, and one pump is future (typical for each feeder). The existing switchgear inside the pump station includes provisions for addition of two additional high service pump starters. New 2400v starters will be required as well as controls, motor protection, and vibration equipment.

The feeder and bus sizes will need to be reviewed and associated protective relaying settings reviewed to accommodate the addition of two high service pumps.

FILTER REHABILITATION

Rehabilitation of the filters will include removal and replacement of the existing header and lateral underdrains or the older (1936) filters. The existing header and lateral system will need to be completely removed and recommendation will be provided for a replacement of the underdrain system.

The City of Muskegon will benefit from experience gained at several water treatment plants regarding the installation of Integral Media Support (IMS) type underdrain systems. Several failures of this type of system have occurred which has resulted in an

expanded knowledge of the appropriate installation details of this type of system. The primary problem that now has been addressed is the means of anchorage of the drains near the collection gullet to prevent uplift during backwash.

Installation of an IMS type underdrain system will have a positive benefit in that additional media depth could be provided and the potential for head loss due to air binding is significantly reduced. A filtering rate of 4.0 gpm per square foot has been accomplished at several facilities using this type of underdrain and this rate has been approved by the Michigan Department of Environmental Quality (MDEQ).

The new filters will require an evaluation of the need for replacement or modification of the underdrain system. Evaluation of air-water or water-surface wash type systems will be included.

In addition to media replacement, the need for an air-water wash system will be evaluated. The air water wash has the benefit of generating less backwash water per wash. However, the cost of an air-water wash system needs to be balanced with the cost of the additional wash water that would need to be treated from a water wash/surface wash system.

If an air-water wash is not utilized, replacement of the existing surface wash system would need to be considered. All surface wash piping internal to the filter would need to be replaced and the system would need to be equipped with rotational flags to indicate positive rotation of the surface wash system.

Filter Valves and Actuators

The existing valves and actuators associated with all ten filters will be evaluated to determine the need for

replacement and/or modification. It may be possible to reutilize the existing valves and replace only the valve actuators. In any event, the need for potential seat replacement due to age and/or wear will be considered.

In addition, the valves and actuators associated with the raw water lines between the low service pump station and the clarifiers and rapid mix rising wells will be evaluated for potential replacement and/or rehabilitation.

Filter Box Protective Coating

The existing filter boxes will be evaluated and the need for any concrete rehabilitation or crack repair will be assessed. In addition, the existing chlorinated rubber coating will be removed and an approved protective coating for the filter box concrete walls and all surfaces above the media will be recommended. Conditions for application of the protective coatings will be considered when selecting appropriate filter box coatings. In addition, all filter box coatings would need to be approved by the National Sanitation Foundation (NSF) for contact with potable water.

Filter Structural Rehabilitation

The condition of the existing filter boxes and settled water distribution flume will be evaluated and recommendations will be provided for resurfacing and/or crack filling. The existing stress cracks at the outlet pipes from the settled water conduit to each of the filters have also been seen at other water treatment plants of similar design. Repair procedures for correcting this leaking crack will be evaluated and measures may include structural rehabilitation coupled with lining and/or crack sealing.

As part of this program, all existing steel gratings will be removed and replaced with fiberglass gratings so as to minimize future maintenance associated with the gratings. Modifications to the filters as a result of this program will be interfaced with the existing filter controls and SCADA system. Changes to existing programs and/or screen details will be performed during the construction phase of the project under a separate contract allowance.

Filter Railings

Railings around the filter tanks will be replaced as required. Detailing of the railings to match the original style in the plant will be included.

Settled Water Channel/Conduit

The existing settled water conduit has exhibited a variety of cracks and leaks. The cracks that have been exhibited are typical of types observed at other water treatment plants of similar design. It is likely that structural rehabilitation will be required in addition to crack sealing and/or crack repair in order to provide an effective solution to these leaks since they are occurring at a location of high structural stress.

Operation

A detailed sequence of construction will be developed for all improvements anticipated under this program. This detailed sequence of construction is necessary so that the contractor will be required to follow a prescribed order of improvements so that these improvements can be constructed without interference with the existing process operation. The portions of the plant that are subject disruption in operation will need to be controlled and be dependent upon the particular seasonal demand so that an appropriate portion of the plant is kept in operation at all times to meet system demands.

SEDIMENTATION BASINS

We understand that the plant desires to upgrade the existing conventional sedimentation basins. Upgrades will involve the following components:

Rapid Mixers

The existing rapid mixing equipment will be reviewed to determine its effectiveness. Newer rapid mix equipment currently available on the market will be compared to determine whether replacement of the current rapid mixers would provide better treatment. A tracer study will be performed across both the rapid mix tanks and sedimentation basins in order to determine the effectiveness of the rapid mixing and the potential for short-circuiting within the existing sedimentation basins.

This tracer study can be performed by measuring the rate of disappearance of fluoride ion if the fluoride feed is temporarily relocated upstream of the rapid mixers and then is abruptly turned off. By measuring the rate of change of the fluoride ion concentration, the rate of short-circuiting through the sedimentation basins can be determined.

Flocculation Equipment

The existing flocculation equipment in the sedimentation basins has been inoperable for many years. Also, the existing wooden baffles between the various sections of the tank utilized for flocculation are quite old and rotting. Several types of flocculation equipment currently available on the market will be evaluated. Specific types of flocculation equipment that may be of potential use include:

- Horizontal chain-driven paddle flocculators
- Vertical paddle driven flocculators

- Walking beam flocculators

Specific types of flocculation equipment will need to be compatible with the existing equipment openings or be compatible with equipment openings that can be constructed in locations conveniently accessible for maintenance. In addition, concerns for maintenance of submerged bearings and chain drives will need to be considered.

Settling Equipment

In order to enhance the settling efficiency within the sedimentation basins, inclined plate or inclined tube type settling equipment will be evaluated. The specific type of inclined plate or tube will need to be evaluated in consideration of potential operation and/or maintenance concerns (solids removal and accumulation). Based on experience at other facilities utilizing inclined plates or tubes, the settling efficiency has increased and sedimentation basins can typically be re-rated to provide for increased capacity. Specific input from the Michigan Department of Environmental Quality will be required to assess the differential capacity increase that would be allowable. Specific TTMPs experience at New Baltimore Water Treatment Plant and St. Clair Water Treatment Plant have allowed for capacity increases of approximately 25 percent over a basin without tube settlers.

Basin Flow & Piping

Installation of inclined plates or tubes will require that a baffle be installed and that collection launders (weirs) be installed above the inclined plates to uniformly collect the flow above the inclined plates or tubes. The tracer study discussed previously will indicate the degree of short-circuiting that is currently occurring and experience with tubes settlers and collection launders will indicate the potential capacity increase that can be accomplished utilizing inclined

plates or tubes coupled with collection launders and a baffle.

Drain Valves

The existing drain valves and operators on the sedimentation basins will be evaluated to determine whether replacement is necessary.

Structural Rehabilitation

The condition of the existing sedimentation basin structure will be reviewed to assess the condition of the walls and potential rehabilitation that may be necessary. Previous inspection of the basin walls in 1990 revealed minor cracks, with little or no significant active leaking. The existing wall adjacent to the older filters will be carefully reviewed to assess the need for potential rehabilitation or lining.

Entranceways

The existing active hatchways will be reviewed to assess the appropriate type of replacement equipment. The original hatchways are quite deteriorated and in need of replacement. New waterproof-type access hatch doors will be provided at these locations to facilitate ease of access. Replacement with portable or fixed ladders will be considered for each of the hatchways. Also, the potential installation of an access gantry crane for removal of equipment from the sedimentation basins will be considered.

36-Inch Raw Water Line

The existing raw water line through the sedimentation basin will be considered for joint rehabilitation. In areas where the exterior of the pipe and leaded joints are exposed to the process water, alternative means of providing a seal around the joints can be accomplished to minimize the exposure of the process water to the leaded joints.

Sludge Removal

An economic comparison will be performed to assess the cost-effectiveness of installation of automatic sludge collection equipment. The cost of this equipment will be compared with continued manual removal of the sludge collected in the sedimentation basins. A portion of this evaluation will assess whether the continued means of disposal of residuals from the treatment process is appropriate and cost effective as opposed to discharged to the County-Owned Wastewater Treatment Facility.

Valving

The existing influent and effluent valves will be considered for rehabilitation and/or replacement. Reliance on these valves for process control will be considered in the performance of this evaluation.

FINAL DESIGN/BIDDING PHASE

1. We will prepare the final contract documents for the recommended plant improvement project. A detailed survey to supplement preliminary information will be prepared at this time.
2. We will prepare and submit contract documents for review and approval to appropriate agencies and obtain permission to bid the project. We assume that the City of Muskegon will likely finance this project utilizing water system revenues, and that outside agency funding is not anticipated for this project.
3. It is assumed that the consultant will print and distribute contract documents to bidders, charging an appropriate fee to bidders to offset costs. We will respond to answer Contractor's

questions and issue addenda as required during the bid phase.

4. We will prepare a bid tabulation and recommendation for contract award.

CONSTRUCTION PHASE

1. We will organize and conduct the pre-construction meeting.
2. We will conduct construction administration including periodic site visits by the Design Engineer; processing of any required changes orders, and processing pay requests from contractors on any additional related work. All documents will conform to City of Muskegon requirements.
3. We will provide full-time review of construction activities during intense activities and part time review during times when the contractor's work force has been lessened or is minimal in order to enforce compliance with the plans and specifications. Our resident project representative (RPR) will coordinate all review of construction activities. We will prepare inspection reports and provide copies of the reports to the City.
4. It is assumed that a soils consultant will be retained by the City as necessary to conduct soil density and compaction testing at our direction. The soils consultant will provide certified testing technicians to perform all testing required for this project. The testing consultant will prepare testing reports; we will review and provide copies of reports to the City. The fee

for this work has not been identified, since the scope of the project has not been determined. It is assumed that the budget for these services can be established at the beginning of the construction phase and should be relatively minor since the amount of underground work is anticipated to be fairly minimal.

5. We will provide drawings that conform to construction records. We will use information acquired by the resident project representative, modify the design plans to reflect as-built conditions, and provide a copy in both ink jet Mylar and electronic format (AutoCAD) to the City.

RELIABILITY STUDY

It is desired to provide an updated reliability study for the treatment plant and water transmission system. The existing reliability study prepared in 1990 will be utilized as a foundation for this analysis. However, all unit processes will be evaluated for the appropriate treatment capacity that currently can be provided.

Unit Operations

This evaluation will be considered to determine whether "bottlenecks" exist along various processes. The following unit processes will be evaluated:

Raw Water Intake

- Determine effect of HDPE chemical application line on capacity
- Determine cost and usefulness of cladding the existing intake with copper to discourage zebra mussel attachment.

Low Service Pumps and Metering

Flocculation and Clarification

Filtration

Disinfection

High Service Pumps and Metering

Chemical Storage, Transfer and Application

Hydraulic Model of Plant –

- We propose to develop a spreadsheet-type model of flow through the Water Filtration Plant.

System Storage

- The existing system storage consists of the clear wells at the Water Filtration Plant, plus the Harvey Street Reservoir and all of the elevated storage tanks. The storage quantity and location will be evaluated to determine its full capacity and reliability. The overall effectiveness of system storage for equalizing diurnal demands on

a maximum day basis can best be accomplished utilizing Extended Period Simulation (EPS) associated with a water distribution system computer model. As part of the reliability study, an EPS will be performed for the entire Muskegon water transmission and distribution system. EPS can provide a continuous plot of the water level at each of the reservoirs. This is the most effective and efficient way to evaluate the appropriateness of the existing system storage capacity. In addition to evaluating the quantity and effectiveness of existing system storage, the following items will be evaluated:

Nims Street, Roberts Street, Marshall Street and Roosevelt Park Elevated Storage Tanks

- The altitude and supply valving will be evaluated to determine whether additional valves are necessary.
- The vault structures will be evaluated.
- The antenna systems and wire locations for radio telemetry system evaluated.

Muskegon Township Elevated Tank

- Evaluate need for second elevated storage tank. This evaluation will be performed in conjunction with the overall system computer model EPS. If the existing storage is marginal, recommendations for additional storage may be made to estimate the reliability of the system.
- The size of the distribution mains within the Muskegon Township system will be evaluated to determine whether additional mains would be recommended to reduce operating pressures associated with this system.

- The existing reliability studies performed for the North Muskegon and Muskegon County Northside and Southside systems will be reviewed to evaluate the effect on the City of Muskegon water system.

Booster Stations

The existing Harvey and Keating Booster Stations will be reviewed to determine the available storage and pumping capacity. The availability of auxiliary power for operation of these booster pumping facilities will also be reviewed. The existing vault piping and valving and by-pass valve operation at the Harvey Street Reservoir will be reviewed to determine effectiveness and whether any changes would be recommended.

The existing Keating Booster Station will be evaluated to determine the condition of the existing structure and equipment and whether the station is needed for long-term reliable service.

Transmission and Distribution System Model

The existing hydraulic model of the transmission and distribution system will be updated to add all water mains of recent construction 12-inch or larger. The system will be utilized to create an Extended Period Simulation (ESP) of the Muskegon water system. As described earlier, this will be a useful tool in assessing the capacity of the existing storage facilities to provide adequate water on a maximum day basis. In addition, the effectiveness of the system to provide fire flow at various locations in the system can also be evaluated. We will review the currently available ISO fire hydrant test data and utilize these reports to provide further calibration of model. As requested, the model will also include an evaluation of the north loop around the northern portion of the lake to North

Muskegon. This alternative was discussed in the early reliability study as a means by which to provide additional transmission capacity around the north side of Muskegon Lake. The WaterCad Model can relatively easily demonstrate the impacts that this additional main will provide.

The model will be calibrated using existing system parameters. Each of the high service and booster pump curves will be set up within the model to enable evaluation of a variety of combinations. The model needs to reflect the demands, pumping and storage facilities that withdraw water from the transmission system. A variety of pumping/demand conditions will be analyzed so that seasonal variations that result in different flow combinations can be analyzed.

Evaluate compliance with Safe Drinking Water Act Requirements (SDWA)

We will review the current technical, managerial and financial capabilities of the system with regard to SDWA guidelines. A comparison of staffing levels with the AWWA Water Industry Database will be performed. This database provides a good comparison of the staffing levels and financial capabilities of the Muskegon system as it compares with other utilities within USEPA Region 5 (Great Lakes Region).

Power and Energy Consumption

We will review the average power consumption per unit of water treated. This data will also be compared with the AWWA Water Industry Database as a comparison of the effectiveness of the Muskegon Water System.

Staffing

The current plant and system staffing will be compared to the AWWA Water Industry Database. Once again, this database provides a good comparison of how the Muskegon Water System compares with a variety of utilities throughout the Great Lakes region.

Structures

As part of the reliability study, the general condition of all plant structures will be reviewed. Part of this review will include a summary task maintenance effort and projection of when future maintenance might be necessary. In addition, a rating system will be developed for the overall appearance of masonry structures and including an approximation of the amount of routine tuck jointing and other joint maintenance that may be necessary based on the condition of the structure.

Unattended Operation

We will review the potential for unattended or remote operation during lower demand periods. It is anticipated that unattended or remote operation is feasible only in the winter months when the plant is capable of operating solely with the sedimentation basins. Periodic startup and shutdown of the up flow clarifiers is not feasible based on past experience. Unattended or remote operation of the filtration plant will allow plant management the opportunity to assign the operating staff to perform other tasks. We will evaluate the type and frequency of alarms that occur on a daily basis to make recommendations for unattended or remote operation of the plant and pumping systems. The proximity and availability of operators on call to respond to the alarm conditions will be an important element of this evaluation.

DISCHARGE ELIMINATION STUDY

Several of the current plant water discharges currently go to the lake. It is anticipated that discharge limitations may be imposed upon these discharges in the future. Therefore, it may not be feasible to continue to send all of these discharges to the lake through the existing plant drain. The discharges of concern are as follows:

- Filter drain
- Filter surface wash
- Filter backwash
- Filter-to-waste
- Clarifier drain
- Sedimentation Basin drain
- Plant floor drains

As part of the reliability study prepared in 1990, consideration was given to the potential of converting the existing 1928 Pump Station structure into a holding tank for plant discharges. The intent was to utilize the structure as a holding tank and, thereby, settle the wash water content and return the clarified water to the treatment process.

New regulations regarding the quality of water returned to the treatment process may make this alternative not feasible. Other alternatives that include treatment of the wash water prior to discharge to the lake need to be evaluated. Additionally, it may be necessary to discharge a portion of the water (settled solids) to the sanitary sewer. As part of this task the overall quantity of water to be handled and treated will be assessed and the unit cost of treatment will be developed. For each alternative, the expected discharge limits and cost will be developed. The following discharge alternatives will be evaluated:

- Continue untreated discharge to the lake.
- Discharge to sanitary sewer.
- Discharge to the existing 36-inch line south of 1928 Pump Station.
- Partial treatment and discharge to the lake
- Complete treatment to meet SDWA standard and recycle

Our budget for engineering services for the design and construction phase services of this portion of the project assumes that the alternative involving demolition of the 1928 Pump Station and conversion into a reservoir and pump station with solids removal to the sanitary sewer and liquid decanting to the lake will be utilized. It is assumed that these improvements will be included in a single construction contract along with the plant improvements discussed under the Plant Improvement Project.

September 20, 2001

Mr. Robert J. Veneklasen
Water Plant Supervisor
City of Muskegon
Water Filtration Plant
1900 Beach Street
Muskegon, MI 49441

Re: Request for Additional Proposal Information

Dear Mr. Veneklasen:

We are in receipt of your letter request for additional proposal information dated September 7, 2001. With regard to the request for information, we respond as follows:

1. As we discussed recently, there is no single project that is exactly similar to the requested project at the Muskegon Water Filtration Plant. However, we have provided the original and final engineering fees, as well as the bid and final construction costs for a number of projects as outlined in the table below. Please let us know if any additional information is required.

Project	Engineering Fee		Construction Cost	
	Original	Final	Bid	Final
North Chicago, IL WTP Filter Rebuild	\$117,000	\$117,000	\$1,102,000	\$1,124,748
Frenchtown Twp. WTP	\$715,000	\$725,000	\$6,764,000	\$6,887,905
Traverse City WTP	\$199,100	\$199,100	\$1,700,000	\$1,700,000
DWSD Lake Huron WTP Filters*	\$830,000	\$902,500	\$7,420,000	\$7,420,000
Mount Clemens WTP Plate Settlers	\$65,000	\$65,000	\$1,500,000	\$1,686,000
Hillsdale WTP**	\$185,000	\$229,400	\$2,392,000	\$2,495,249
MHOG WTP	\$535,000	\$632,000***	\$4,623,000	\$4,735,000
New Baltimore WTP (Plate Settlers, Filters)	\$394,518	\$418,818	\$2,417,000	\$2,480,000

*Projected amount of completion at end of 2001

**Change in scope due to Bulk Sodium hypochlorite conversion

***Additional cost due to added off-site work and project extended due to contractor delay

2. We apologize for any misunderstanding regarding the solids handling portion of the project. Our assumption in the preparation of the proposal was that the alternative involving conversion of the existing 1928 pump station structure into a backwash holding basin would be implemented into the final design. As such, we have included costs within our design to handle the conversion of this structure. However, as you have explained, this alone will not address the solids handling and disposal. Our initial assumption for the conversion of the 1928 pump station was that a solids collection device would be installed. The method of handling of the solids beyond the removal from the backwash water storage tank would be determined as part of the discharge elimination study. We envision potential options including

- Discharge of the solids stream to the Muskegon County Wastewater Treatment Plant.
- Continued on-site drying of the solids with manual removal and disposal as is currently practiced.
- Dewatering by some mechanical means with disposal to a landfill.

Concerns regarding heavy metals in the wastewater flow may prohibit discharge to the sanitary sewer. Therefore, this is not considered to be a viable option.

If continued use of the drying beds is the recommended course of action in the discharge elimination study, we propose to include the additional costs to design modifications to the existing drying beds that become necessary as a result of on-site recirculation of backwash water and return of the solids stream to the drying beds as well as associated construction phase services.

If, during the discharge elimination study, it is determined that the continued use of the drying beds for removing solids from the settled wash water stream is not feasible, then an alternative involving mechanical removal of the solids will likely be the most cost-effective option. Most water plants have utilized centrifuges for this purpose.

If centrifuges are utilized for concentration of the solids from the wash water system, it may also be prudent to include the concentration of solids from the clarifier blow down, as well as sedimentation basin sludge removal. This may require the addition of a holding tank for solids prior to dewatering. If this is desirable, it could possibly be incorporated in the design of the proposed centrifuge building.

For the purpose of this proposal amendment, we offer alternative fees for the design and construction phase services for either:

- i) Design and construction phase services for modification of the existing sludge drying beds to handle the additional solids from the wash water drain system;

- ii) Design and construction phase services for a solids handling facility including mechanical dewatering with centrifuges, plus a truck or dumpster loading station.

The proposed additional fees for the design and construction phase services for these two alternatives are as outlined below:

Project	Design Fee	Construction Fee
Sludge Drying Bed Modifications	\$31,000	\$9,000
Solids Dewatering Facility	\$95,000	\$40,000

Our initial assumption is that the water removed from the waste washwater storage tank can be discharged to the Lake or the wastewater treatment plant under permit. This will be determined as part of the discharge elimination study.

If discharge to one of these locations is not feasible, then returning the decanted water to the plant influent may be the preferred option. It is likely that additional pretreatment of the backwash water would be necessary if it is intended to reintroduce this flow into the plant flow stream. Most likely, the barrier that can be utilized to prevent potential reintroduction of cryptosporidium cysts and other microscopic contaminants into the flow stream would be to implement some form of microfiltration membrane treatment of the wash water prior to reintroduction to the plant flow stream. This could potentially be accommodated within the old pump station structure. We did not originally anticipated the cost to provide design and construction phase services for an additional membrane pretreatment device and associated building. The additional engineering fee to provide design and construction phase services for a membrane treatment unit would be \$52,000 and \$28,000 respectively.

We hope that the above information satisfactorily responds to your concerns. We look forward to this project and to continue being of service to the City of Muskegon. If there is any additional concerns or if you need additional information, please do not hesitate to contact us.

Sincerely,

Dennis J. Benoit, P.E.
Senior Vice President

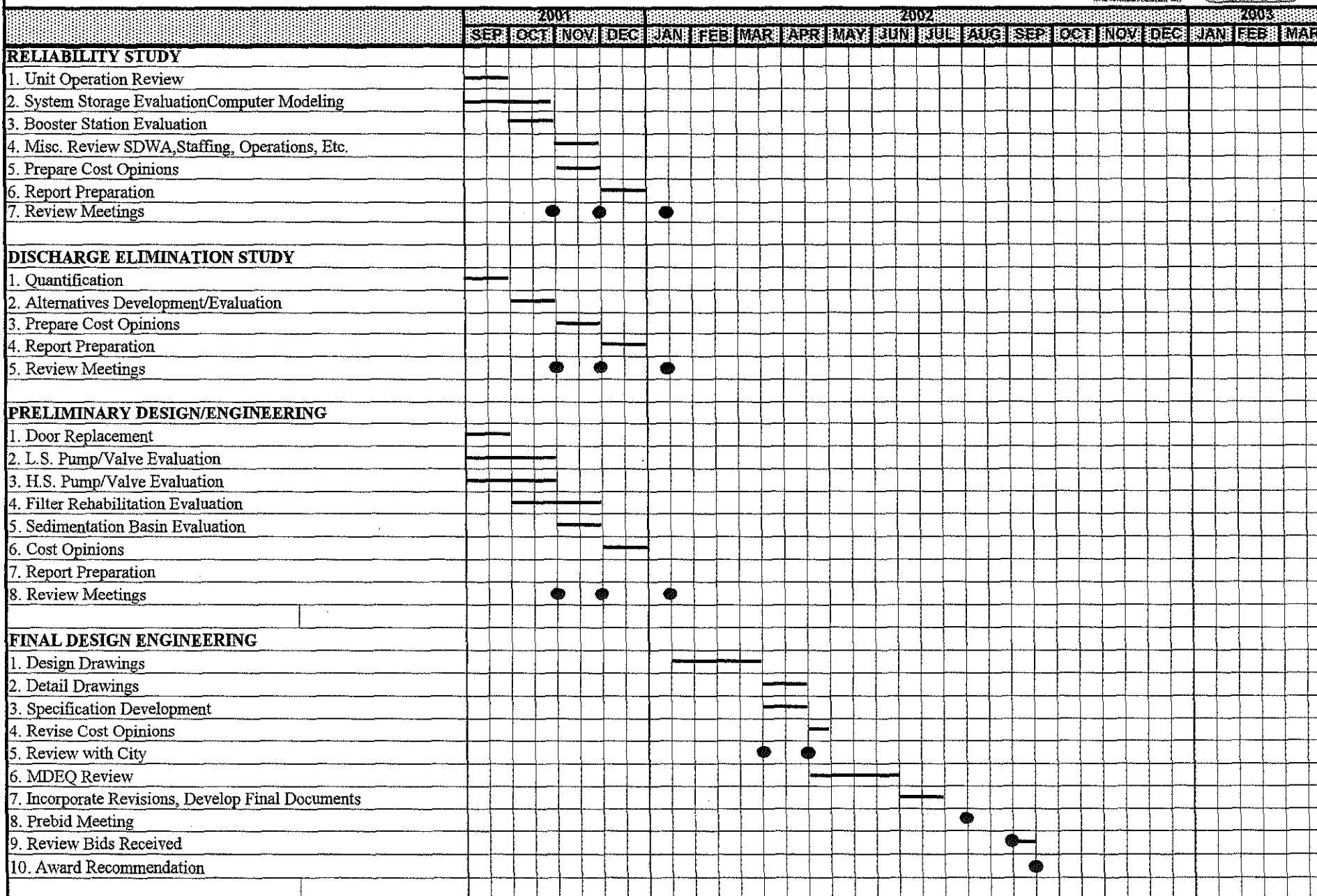
/jbc

P:\0482000\WFP Improvements 2001\Veneklasen Ltr Request For Addl Info.doc

Schedule

A project schedule has been prepared to show all phases of the plant improvement project, reliability study and discharge elimination study. It is assumed that the recommended alternative from the discharge elimination study will be included within the plant improvement project and that any minor plant improvements identified during the reliability study will also be included within the plant improvement project. Overall, we anticipate that the plant improvement project will take approximately 14 months but could be prolonged if filter valve delivery dates cannot be timed so that one half of the filters can be removed from service.

CITY OF MUSKEGON WATER FILTRATION PLANT IMPROVEMENTS PROJECT SCHEDULE



[illegible]

Professional Fees

As requested, the project fees have been broken down for the purpose of assessing the relative cost of each portion of the project. The breakdown of fees for each of the project phases is shown on the following page. Our fees for Resident Project Representative services include 32 weeks at full time, 20 weeks at approximately half time and an additional 24 days for follow up on punch list and other completion items

Our not-to-exceed professional fees for the following project components are as follows:

Project	Study	Design	Construction
Plant Improvements	N/A	\$275,000	\$257,000
Reliability Study	\$35,000	*	*
Discharge Elimination Study	\$15,000	**	**
Sub Totals	\$50,000	\$275,000	\$257,000
TOTAL FEE			\$582,000

*It is recognized that minor plant improvements may be identified during the reliability study and would be included within the overall scope of the Plant Improvements project. Distribution system improvements and major plant improvements would be included in a Capital Improvement program and implemented at a later date.

** For budgeting purposes, it is assumed that the original alternative of developing the 1928 pump station into a holding cell with recirculation pump station would be included in the Plant Improvements project.

It is to be understood that the total fee will not be exceeded unless there are changes in scope or additional studies are required outside of the scope of services proposed. Tetra Tech MPS reserves the opportunity to transfer fees between phases of the work provided the total fee of \$582,000 is not exceeded for the total project as proposed.

COST BREAKDOWN OF SERVICES

Muskegon Water Filtration Plant Improvements

	Reliability/Dischg. Elim. Study			Plant Improvements Design		Construction	
	Avg. Rate	Hours	Amount	Hours	Amount	Hours	Amount
Direct Labor Cost:							
Corporate Officer	\$58.00	39	\$2,262	132	\$7,656	46	\$2,668
Staff Manager	\$56.00	12	\$672	70	\$3,920	4	\$224
Project Manager	\$39.00	92	\$3,588	290	\$11,310	0	\$0
Engineer 5	\$35.00	88	\$3,080	608	\$21,280	452	\$15,820
Engineer 4	\$30.00	24	\$720	160	\$4,800	26	\$780
Engineer 3	\$24.00	0	\$0	148	\$3,552	40	\$960
Engineer 2 / RPR	\$21.00	170	\$3,570	630	\$13,230	2450	\$51,450
Engineer 1	\$19.00	80	\$1,520	164	\$3,116	228	\$4,332
Secretarial	\$13.00	10	\$130	134	\$1,742	140	\$1,820
Technician	\$11.00	40	\$440	780	\$8,580	104	\$1,144
CADD Designer	\$16.00	40	\$640	900	\$14,400	40	\$640
SUBTOTAL		595	\$16,622	4016	\$93,586	3530	\$79,838
Direct Labor Overhead (60%)			\$9,973		\$56,152		\$47,903
Gen./Admin. Overhead (80%)			\$13,298		\$74,869		\$63,870
SUBTOTAL			\$39,893		\$224,606		\$191,611
Cost Escalation (5%)			\$0		\$0		\$9,581
SUBTOTAL			\$39,893		\$224,606		\$201,192
Other Direct Costs:							
Travel, Misc.			\$1,350		\$1,800		\$12,820
Computer/CAD			\$1,488		\$10,040		\$8,725
Printing/FAX/Phone/Mail			\$400		\$2,500		\$600
SUBTOTAL			\$43,130		\$238,946		\$223,337
Fixed Fee (15%)			\$6,470		\$35,842		\$33,501
TOTAL HOURS AND FEE		595	\$49,600	4,016	\$274,788	3,530	\$256,837
Rounded Off			\$50,000		\$275,000		\$257,000
GRAND TOTAL FEE							\$582,000

GENERAL PROVISIONS

The CONSULTANT shall:

1. Follow standard accounting practices and permit the CITY to inspect its PROJECT books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of the final payment for work conducted under this Agreement.
2. Have in its employ a sufficient number of qualified employees available to complete the PROJECT in accordance with the schedule established upon the authorization of the services as outlined herein.
3. Show evidence of Workmen's Compensation Insurance, said insurance to be required by law. Maintain and show evidence of Professional Liability Insurance in the amount of \$500,000, maintain General Liability Insurance with a limit of liability not less than \$500,000, and name the CITY OF MUSKEGON as additional insured with policy(ies) not being cancelled or materially altered without at least thirty (30) days notice to the CITY.
4. Commence work on the PROJECT as set forth in this Agreement only upon receipt of written notice from the CITY.
5. During the performance of the services herein provided for, be responsible for any loss or damage to the documents, hereinafter enumerated as belonging to the CITY, while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.
6. The CONSULTANT will perform all work on this project with its own employees except as noted herein, or as approved by the CITY.
7. CITY INCOME TAX WITHHOLDING. The CONSULTANT shall withhold Muskegon City income taxes from each and every employee who is subject to same, and shall pay the income tax due, if any. CONSULTANT shall further require the same of each subconsultant or other party with whom CONSULTANT works or from whom CONSULTANT obtains goods or services for the project. Payroll submissions required by this agreement shall include full information showing said withholding. The City may withhold payments otherwise due to the CONSULTANT to assure compliance with this agreement or cure noncompliance.

II. THE CITY WILL:

- A. Provide to CONSULTANT existing data as it is available from its files.
- B. Pay for and in consideration of the services rendered by the CONSULTANT in carrying out the PROJECT on the basis of costs as outlined in the proposal under the sections entitled "ENGINEERING SERVICES WORK PLAN" and "CURRENT FEE SCHEDULE" shall not exceed \$717,000.00. Any increase in the amount to be paid to the CONSULTANT shall be by amendment to this Agreement.
- C. Determine actual costs for the PROJECT work required and performed in accordance with the following terms:

- 1. Direct Salary Costs: Actual Direct Salary costs of members of the firm and staff personnel on the basis of salary, on an hourly basis (without markup) actually expended for said personnel for the time such personnel are directly utilized on the PROJECT.
- 2. Other Direct Costs: Actual cost of other material and services as may be required hereunder but which are not normally provided as part of the overhead of the CONSULTANT. All actual costs shall be itemized and certified as paid to specifically named firms or individuals, and shall be supported by proper receipts. Examples of items normally treated as direct costs are as follows.

Computer services, travel, transportation, printing and telephone costs related to the PROJECT work performed. Engineering services (by others) such as surveys, professional engineering services, etc., and items other than engineering services related to the PROJECT.

- 3. Overhead, Indirect Costs and Profit: The overhead and indirect costs incurred by the CONSULTANT during performance of the PROJECT work. The amount of overhead, indirect costs and profit payment, including payroll overhead, will be calculated as a percentage of all direct salary costs related to staff personnel. Overhead and indirect costs shall include those costs which, because of the incurrence for common or joint objectives are not readily subject to treatment as a direct cost. The percentage rate, for Payroll Overhead (Direct Salary Costs), Firm Overhead and Profit, which will be applied to direct labor costs for progress payments, is 276%.

It is agreed that this rate is the final overhead rate and will be used for all work related to the PROJECT.

- D. Make payments to the CONSULTANT in accordance with the following procedures:
1. Progress payments shall be made for reimbursement of amount earned to date and shall include direct salary costs, other direct costs, calculated amounts for overhead, indirect costs and profit using the aforementioned rate.
 2. Partial payments will be made upon the submissions by the CONSULTANT of an Invoice Voucher, accompanied by properly completed reporting forms and such other evidence of progress as may be required by the CITY. Partial payments shall be made only once a month.
 3. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid. Final payment will be made upon completion satisfactory to the CITY.
- E. If work on the Agreement is terminated before completion, pay the CONSULTANT actual costs incurred for the work up to the time of termination of this Agreement, compensate the CONSULTANT in full for all overhead costs defined above and prorated profit on work completed. The aforesaid payment shall be an amount which can be established by the CONSULTANT from his accounts and records, and verified by the CITY. In no case shall the amount paid to the CONSULTANT for partial completion of work under this Agreement exceed the amount the CONSULTANT would receive had all work be completed.

III. IT IS FURTHER AGREED THAT:

- A. Upon completion or termination of this Agreement, all documents prepared by the CONSULTANT, including tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of service, shall become the property of the CITY. The CONSULTANT may keep a copy of materials developed through this contract.
- B. No portion of the PROJECT work, heretobefore defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the CITY. Consent to sublet, assign or otherwise dispose of any portion of said work shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Agreement.

- C. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of work, and the interpretation of plans and specifications shall be addressed by the CONSULTANT to the satisfaction of the CITY. All questions as to the satisfactory completion shall be decided by the CITY.
- D. Any change in work to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the CITY prior to the performance thereof by the CONSULTANT.
- E. The CONSULTANT warrants it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award or making of the Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- F. The CONSULTANT specifically agrees that in the performance of engineering services herein enumerated, by him, or by an approved subcontractor, or anyone acting in its behalf, they will comply with any and all State, Federal, and Local statutes, ordinances and regulations and obtain all permits that are applicable to the entry into and the performance of this Agreement.
- G. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the progress of any portions of the services specified in this Agreement, except as hereinafter provided.

In case of a substantial delay on the part of the CITY in providing to the CONSULTANT access to the site, necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform his work under changed conditions not contemplated by the parties, the CITY will provide supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim of supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to this Agreement. When delays are caused by circumstances or conditions

3. Workers' Compensation Insurance: The CONSULTANT shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employer's Liability coverage, in accordance with all applicable Statutes of the State of Michigan.
4. General Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract, commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$500,000** per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability; (b) Products and Completed Operations; (c) Independent Contractor's Coverage; (d) Broad Form General Liability Extensions or equivalent.
5. Motor Vehicle Liability: The CONSULTANT shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than **\$500,000** per occurrence or combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
6. Professional Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract and during the performance of all services, Professional Liability Insurance covering all performances from the beginning of the Consultant's services on a "claims made basis" and shall maintain coverage from commence of this contract until six (6) months following completion of the Consultant's work with limits of liability not less than **\$500,000** per occurrence.
7. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insured": The CITY OF MUSKEGON, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.
8. Cancellation Notice: Workers' Compensation Insurance, General Liability Insurance, Motor Vehicle Liability Insurance, and Professional Liability Insurance, as described above, shall include an endorsement stating the following: It is understood and agreed that Thirty (30) Days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: CITY OF MUSKEGON ENGINEERING DEPARTMENT.

beyond the control of the CONSULTANT, as determined by the CITY, the CONSULTANT shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the CONSULTANT to proceed to complete any services, or part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the CITY of any of its rights herein set forth.

- H. In case the CONSULTANT deems extra compensation will be due them for work or materials not clearly covered in this Agreement, or not ordered by the CITY as a change, or due to changed conditions, the CONSULTANT shall notify the CITY in writing of his intention to make claim for such extra compensation before they begin such work.

Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any ways be construed to establish the validity of the claim. Such extra compensation shall be provided only by amendment to this Agreement.

- I. The CONSULTANT agrees to comply with the following insurance and indemnity requirements:

1. Hold Harmless Agreements: To the fullest extent permitted by law, CONSULTANT agrees to [REDACTED] indemnify, and hold harmless the CITY, its elected and appointed officials, employees, volunteers, and others working on behalf of the CITY against any and all claims, demands, suits, or loss, including any costs connected therewith, and for any damages which may be asserted, claimed or recovered against or ~~from~~ the CITY, its elected and appointed officials, employees, volunteers, or others working on behalf of the CITY, by reason of personal injury, including bodily injury and death, property damage, including loss of use thereof, and/or the effects of or release ~~or of~~ toxic and/or hazardous material which arises out of the negligent acts and or omission of the engineer. The obligation to [REDACTED] hold harmless extends to CONSULTANT'S employees, agents, subcontractors, assigns and successors.
2. Consultant Insurance Requirements: CONSULTANT shall not commence work under this contract until obtaining the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan and Best Rated A VIII. All coverage shall be with insurance carriers acceptable to the CITY.

JB

JP

9. Proof of Insurance Coverage: The CONSULTANT shall provide the CITY at the time of the contracts are returned by him for execution, certificates and policies as listed below:

- (a) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance.
- (b) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance.
- (c) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance.
- (d) Two (2) copies of Certificate of Insurance for Professional Liability Insurance.
- (e) If so requested, certified copies of all policies mentioned above will be furnished.

If any of the above coverages expire during the term of this contract, the CONSULTANT shall deliver renewal certificates and/or policies to the CITY at least ten (10) days prior to the expiration date.

- J. This Agreement shall be terminated upon advisement to the CONSULTANT by the CITY that the PROJECT work is completed and accepted, with the exception that the Professional Liability Insurance at the identified limits of coverage shall remain in effect for a period of six (6) months following the date of said advisement of termination.
- K. Upon execution of this Agreement by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

TETRA TECH MPS

Judy Cober
Witness Judy COBER

Dennis J. Benoit
DENNIS J. BENOIT

Witness

CITY OF MUSKEGON

Linda Potter
Witness Linda Potter

Fred Nielsen 12-20-01
Fred Nielsen (Mayor) Date

Margaret M. Platt
Witness Margaret M. Platt

Gail A. Kunding 12-20-01
Gail Kunding (Clerk) Date

AGENDA ITEM

CITY COMMISSION MEETING November 27, 2001

TO: MAYOR AND CITY COMMISSIONERS

FROM: Bryon L. Mazade, City Manager

DATE: November 20, 2001

RE: Flag Flying Policy

SUMMARY OF REQUEST

To approve a policy for the consideration of requests to fly flags on City property.

FINANCIAL IMPACT

None

BUDGET ACTION REQUIRED

None

STAFF RECOMMENDATION

To approve the attached policy.

COMMITTEE RECOMMENDATION

None

CITY OF MUSKEGON

FLAG PLACEMENT POLICY

2001-139(b)

A. Purpose

To provide a procedure to consider requests to the City to fly flags on City owned or occupied property or facilities (herein "City property"). The flying of the United States of America, State of Michigan, the County of Muskegon and the City of Muskegon flags are exempt (except as set forth herein), from this policy and can be flown on City property or at City property by authorized City employees or officials.

B. City Control of Flag Placement.

Except as permitted by the City Commission or City staff members with authority, no flag, including "exempt" flags shall be placed on City property by any person except authorized city employees or officials. The procedures and standards set forth in this policy document shall govern the City's decision to permit or deny permission to have a particular flag flown or displayed on City property.

The flying of flags on City property is peculiarly within the prerogatives of the City. Flags which are permitted to be flown on City property have the effect of representing to the community the City's support for the organization or point of view which is represented by the flag. The City reserves the right to refuse or terminate the flying of any flag for the reason that unintended endorsements by the City shall not result from this policy. It is this concern, together with the City's acknowledgement that the flying of flags is a form of speech, which shall guide the City in administering this policy.

C. Review Process. The Procedure.

1. Request

A request to fly a flag(s) must be submitted in writing to the City Clerk at least 30 days prior to when the flag is proposed to be raised. The request shall state in writing:

a.. All the reasons for the request.

b. Describe and display the flag, which shall not be changed in the event permission is given.

c. State the name, address, and the names and addresses of all the officers, of the organization submitting the request. Indicate the legal form of organization, and the name and address of the contact person who shall be responsible for the flag's condition and presentation.

d. State the period for which the flag is requested to be flown.

e. The desired location. (Locations shall be determined by the City based on availability and ability to display the flag without infringing on the display by others, including the City itself).

2. City Staff Review

The City staff will review the request and make a recommendation to the City Commission based on the following:

a. Appropriateness of the organization and the flag. Flags which support illegal activities, take political positions or support candidates for any office, advocate against City policies or involve obscene language, symbols or activities are prohibited.

b. The number of other flags already approved.

c. The availability of locations.

d. The time period during which the flag shall be permitted to be flown on City property. No permission shall be given for permanent flag placement. In the event an applicant desires a longer time period than that granted, renewal applications shall be submitted at least 30 days before the end of the initial period in order to afford the City Commission opportunity to decide on the extension.

D. City Commission Consideration and Decision.

The City Commission will consider the request after the review and recommendation from City staff. The City Commission will consider the determination of City staff when making their decision as well as any other criteria they deem appropriate, to the extent that the criteria are legally and constitutionally supportable. In the event a request is denied by the Commission, a decision with the reasons set forth shall be adopted at the time of the refusal, and set forth in the minutes in writing as part of the motion (or resolution) adopted.

E. Grant by City Commission; Location and Term

Any request that is approved will be accomplished by City Commission resolution that will include the specific location(s) where the flag(s) can be flown and the time period for which the request is granted.

Policy regarding term of the permission: No permanent permission shall be granted. The City's policy is to favor shorter term flying periods to accommodate a reasonable number of requests and avoid unintended endorsements which can arise not only by the message of the flag itself, but also by the duration a flag is flown other than flags of the City, County, State and the United States.

Applicants are encouraged to apply for periods of display which are shorter, as stated above. However, the Commission will consider periods up to one year for flags which represent long term or continuing organizations, activities or public (non-political) concerns. More typical will be permission granted for periods of a week to thirty days.

The term of any permission granted shall be subject to the City's determination to fly another flag in the location of and instead of the permitted flag in a time of emergency or of critical public concern.

F. Flag Maintenance

It shall be the responsibility of the requesting organization to maintain the flag(s) in good repair. Failure to do so will result in revocation of the permission to fly the flag(s). The City shall afford access to the flag for repair and maintenance.

G. Revocation

The City Commission shall have the sole discretion to revoke the permission to fly a flag permitted under this policy for whatever reasons they deem appropriate and which are legally and constitutionally supportable. Claims made by any person to whom permission has been granted concerning the import of the City's permission to fly a flag which are not intended or acceptable to the City shall be, without limitation, grounds for revocation without notice.

Any revocation of permission before the term permitted has expired shall be accomplished by the City removing the flag and notifying the applicant to come to the City's offices to retrieve the flag or flags removed. In such case the City shall indicate by written memorandum delivered to the applicant the reason(s) for revocation.

2001-139(b)
CERTIFICATION

This policy was adopted at a regular meeting of the City Commission, held on November 27, 2001. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By


Gail A. Kunding, City Clerk

AGENDA ITEM

CITY COMMISSION MEETING November 27, 2001

TO: MAYOR AND CITY COMMISSIONERS

FROM: Bryon L. Mazade, City Manager

DATE: November 20, 2001

RE: Flag Flying Request – Rolling Thunder

SUMMARY OF REQUEST

To consider a request from Rolling Thunder to fly the MIA/POW flag.

FINANCIAL IMPACT

None

BUDGET ACTION REQUIRED

None

STAFF RECOMMENDATION

To approve the attached resolution granting permission to Rolling Thunder to fly the MIA/POW flag.

COMMITTEE RECOMMENDATION

None

Attn. Ric Scott

Enclosed is a List of what we feel would be the most appropriate places to fly the POW/MIA flags.

1. Inside and outside of Walker Arena
2. Muskegon Ave. at the welcome to Muskegon sign next to the sculpture.
3. Hackley Park
4. City Hall.

We would like to donate the first (5) Five and also hold Dedication ceremonies that John McClain will talk to you more about.

After which we would like the City to pick up with keeping the flags maintained.

Thank You Very much in this matter

Dave Johnson
Board Member
Rolling Thunder, Inc.
Michigan Chapter 1
P.O. Box 443
Muskegon, Mi. 49443-0443

CITY OF MUSKEGON

RESOLUTION 2001-139(c)

WHEREAS, the Muskegon City Commission has established a policy that allows organizations to fly flags on City property upon the adoption of a resolution by the City Commission, and

WHEREAS, Rolling Thunder has requested to fly the MIA/POW flag at various City properties in the City pursuant to the City policy.

THEREFORE BE IT RESOLVED, that the Muskegon City Commission grants Rolling Thunder permission to fly the MIA/POW flag at the following locations:

Inside and outside the L.C. Walker Arena

Corner of Shoreline Drive and Muskegon Avenue

Hackley Park

City Hall

BE IT FURTHER RESOLVED that the permission to fly the MIA/POW flag is granted for one year.

Ayes:

Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Spataro

Nays:

None

Adopted on November 27, 2001

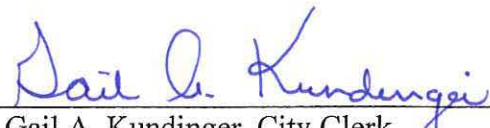

Gail Kunding, City Clerk

2001-139(c)
CERTIFICATION

This resolution was adopted at a regular meeting of the City Commission, held on November 27, 2001. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By


Gail A. Kunding, City Clerk

Commission Meeting Date: November 27, 2001

*Needs
2nd Reading*

Date: November 16, 2001
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development (33)
RE: Zoning Ordinance Amendment to change front setback requirement

SUMMARY OF REQUEST:

Request to amend the City's Zoning Ordinance to change the front setback landscaping requirements for all multi-family, business and industrial districts.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to change the proposed language in the articles and sections described.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request on 11/15/01, with the addition of two conditions - that the greenbelt area be adjacent to the road right-of-way and be a minimum of 10 feet in average. The vote was unanimous, with L. Abraham, B. Smith, and F. Nielsen absent.

Staff Report [EXCERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 15, 2001

Hearing; Case 2001-39: Request for an amendment to the Zoning Ordinance to reduce the front setback requirement on Henry St. from 20 feet to 10 feet, by Trophy House of Muskegon, Inc.

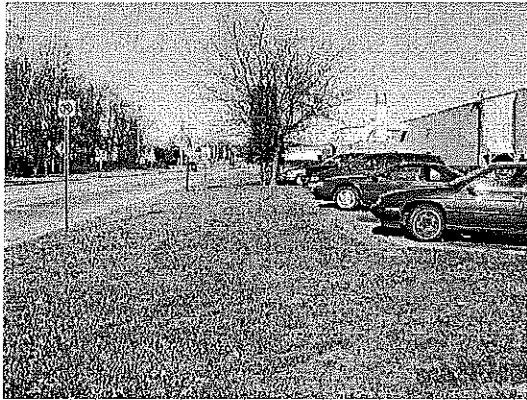
BACKGROUND

In August, Trophy House applied for both a variance and a site plan review for their property located at 2300 Henry St. The variance request was to reduce the front setback requirement from 20 feet on Henry St. to 10 feet. The variance was denied, and Trophy House submitted a revised plan showing that they would comply with the 20-foot setback. The revised plan was approved.

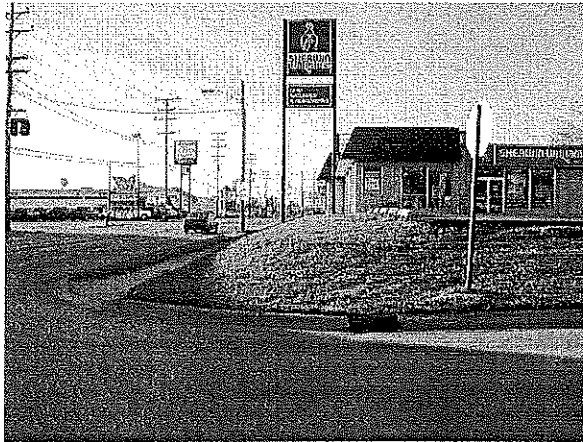
Since that time, city staff has had dialogue with the property owner about the requirement for a 20-foot front setback on Henry Street. The crux of the issue became the ordinance standard that a required front setback had to be landscaped, not that the building had to be set back 20 feet. When the ordinance was amended to relax setback requirements on minor streets, staff did not feel comfortable having buildings less than 20 feet from a major street right-of-way. That opinion has not changed. The 20-foot front setback on Henry has been in effect since at least 1952. Whether or not we should require that the full front setback be greenspace, however, is worth asking. The idea of the green space is not to have pavement right up to the sidewalk. It's unattractive and can be unsafe. Cars often encroach upon the sidewalk making it difficult for pedestrians to pass. Snowplows throw snow and sometimes debris onto property and having a buffer between the road and the business facility protects parked cars, other property and people who may be frequenting the facility. This is especially important on busy streets like Henry. Landscaped areas make business districts much more attractive reducing blight and keeping the City competitive with suburban areas in terms of attractiveness. Well-designed and attractive sites also make for better resale and reuse of property. The question becomes how much of a greenbelt is enough? It was suggested by the applicant that a 10 foot landscaped strip is plenty and the remaining area can be used for drives and parking.

In order to get a better feel for what a 10 or 20-foot stretch of greenspace actually looks like, staff went out and took some measurements and photos of existing businesses, as shown below:

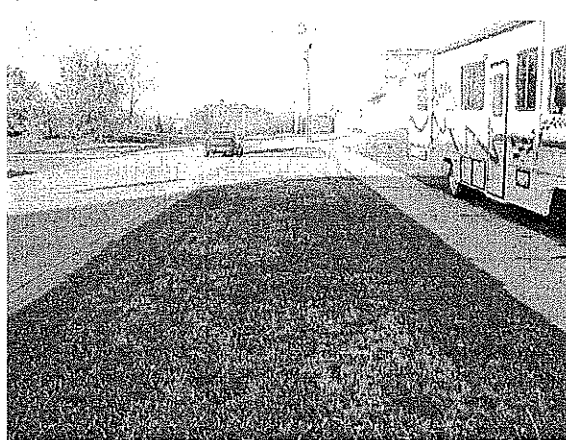
1. ADAC, Black Creek Rd., has 21 feet of greenspace.



2. Sherwin Williams, corner of Henry St. and Pulaski Ave., has a 15 feet of greenspace on Pulaski Ave., and 18 feet of greenspace on Henry St.



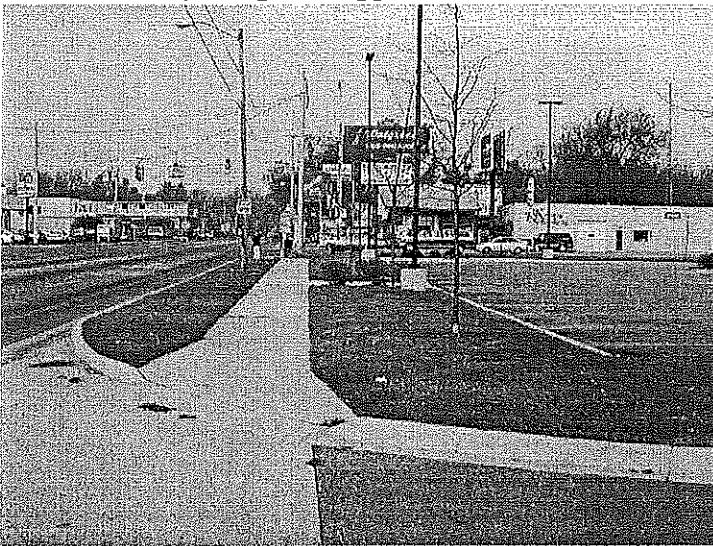
3. Jerry Grow Honda, corner of Henry St. and Pulaski Ave., has 12 feet of greenspace on Pulaski Ave., and 14 feet of greenspace on Henry St. (pics are Pulaski St. side)



4. Rite Aid, corner of Apple Ave. and Getty St., has 20 feet of greenspace on Apple Ave. Their greenspace is not irrigated.



5. Walgreens, corner of Apple Ave., and Getty St., has 10 feet of greenspace on both Apple Ave. and Getty St. (pic is Apple Ave. side).



Staff believes that a 20-foot building setback is necessary, but understands that there may be an argument that the entire setback does not need to be greenspace.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend requirement #14 of Sections 703, 803, 903, and 1903 (Area and Bulk Requirements), requirement #11 of Sections 1003, 1103, 1203, 1303, 1308, 1403, 1503, 1507, 1603, 1703, 1803, and 2003 (Area and Bulk Requirements), requirement #13 of Section 1803 (Area and Bulk Requirements), #9 of the Table I Notes, and requirement #5 of Section 2331 (Landscaping, Fencing, Walls, Screens And Lighting) of the City's Zoning Ordinance to change the front setback landscaping requirements.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Sections 703, 803, 903, and 1903 of Articles VII, VIII, IX, and XIX of the Zoning Ordinance of the City of Muskegon are hereby amended to read:

14. All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained.

Sections 1003, 1103, 1203, 1303, 1308, 1403, 1503, 1507, 1603, 1703, 1803, and 2003 of Articles X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XX of the Zoning Ordinance of the City of Muskegon are hereby amended to read:

11. All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained.

Section 1802 of Article XVIII of the Zoning Ordinance of the City of Muskegon is hereby amended to read:

13. All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained.

The Table Notes of Table I of the Zoning Ordinance of the City of Muskegon are hereby amended to read:

9. Setbacks are subject to landscaping requirements.

Section 2331 of Article XXIII of the Zoning Ordinance of the City of Muskegon is hereby amended to

read:

5. Greenbelt Buffers:

All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained. Greenbelt buffers shall be landscaped in grass, ground cover, perennials, and/or other natural, living, landscape material.

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Gail A. Kunding, City Clerk

CERTIFICATE

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 11th day of December, 2001, 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 Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2001.

Gail Kunding, CMC/AAE
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 December 11, 2001, the City Commission of the City of Muskegon adopted an ordinance to amend requirement #14 of Sections 703, 803, 903, and 1903 (Area and Bulk Requirements), requirement #11 of Sections 1003, 1103, 1203, 1303, 1308, 1403, 1503, 1507, 1603, 1703, 1803, and 2003 (Area and Bulk Requirements), requirement #13 of Section 1802 (Area and Bulk Requirements), #9 of the Table I Notes, and requirement #5 of Section 2331 (Landscaping, Fencing, Walls, Screens And Lighting) of the City's Zoning Ordinance, to require that 50% of required front setback areas be landscaped.

Requirement #14 of Sections 703, 803, 903 and 1903 of Articles VII, VIII, IX, and XIX; requirement #12 of Sections 1003, 1103, 1203, 1303, 1308, 1403, 1503, 1507, 1603, 1703, 1803, and 2003 of Articles X, through XVIII and Article XX; and requirement #13 of Section 1802 of Article XVIII of the Zoning Ordinance of the City of Muskegon are hereby amended to read:

All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained.

The Table Notes of Table I of the Zoning Ordinance of the City of Muskegon are hereby amended to read:

10. Setbacks are subject to landscaping requirements.

Section 2331 of Article XXIII of the Zoning Ordinance of the City of Muskegon is hereby amended to read:

6. Greenbelt Buffers:

All required side and rear setbacks shall be landscaped, greenbelt buffers, unless zero-lot-line is employed for a structure or fire access. At least fifty percent of the required front yard setback shall be landscaped and adjacent to the road right-of-way. An average minimum greenbelt of 10 feet shall be maintained. Greenbelt buffers shall be landscaped in grass, ground cover, perennials, and/or other natural, living, landscape material.

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 _____, 2001

CITY OF MUSKEGON

By _____

Gail A. Kunding
Its Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: November 27, 2001

*Needs
2nd Reading*

Date: November 20, 2001
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *B*
**RE: Zoning Ordinance Amendment to allow secondhand stores
in the B-2, Convenience and Comparison Business, District**

SUMMARY OF REQUEST:

Request to amend Section 1101 (Special Land Uses Permitted) of Article XI (B-2, Convenience and Comparison Business) of the City's Zoning Ordinance to allow secondhand stores, under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to change the proposed language in the article and section described above.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request on 11/15/01, with the addition of two conditions - that the store be adjacent to or within an established, identifiable commercial corridor, and that the store be associated with a 501(c)3 organization. The vote was unanimous, with L. Abraham, B. Smith, and F. Nielsen absent.

**Staff Report [EXCERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING**

November 15, 2001

Hearing; Case 2001-40: Request for an amendment to the Zoning Ordinance to allow secondhand stores in the B-2, Convenience and Comparison Business District, by Tridonn Development.

BACKGROUND

Tridonn Development owns the property located at 1367 E. Apple Ave., which was formerly a Rite Aid store. Rite Aid still leases the building from Tridonn, but has been looking for a tenant to sub-lease to. The Salvation Army is interested in putting their retail store at that location, but secondhand stores are only allowed in B-4 zoning districts, while Tridonn's property is zoned B-2.

Staff has had a lot of dialogue with both the Salvation Army and Tridonn about possible options for the property. The entire block (west of Creston) is zoned B-2 on the south side of Apple, while the north side is zoned both B-2 and R-1. Across Creston, the south side is actually in the township, but the north side is zoned B-4. Tridonn explored the possibility of requesting a rezoning for the subject property to B-4, but felt that such a request, for a spot zone, would not be well received by the Planning and City Commissions. Therefore, Tridonn is asking the city to allow secondhand stores in the B-2 district.

Staff feels that some secondhand stores, those associated with national charity organizations such as the Salvation Army and Goodwill, are usually well-kept, well-run organizations, and it may be reasonable to permit them in B-2. B-2 does allow general retail uses, and there is already a dollar store next door to the subject property. However, staff does recognize that there are concerns associated with secondhand stores which can congregate in less desirable commercial areas.

AGENDA Item No. _____

*Needs
2nd Reading*

MUSKEGON CITY COMMISSION MEETING - November 27, 2001

To: Honorable Mayor and City Commissioners
From: City Manager's Office
Date: November 8, 2001
Subject: Amendments to the Animal Control Ordinance

SUMMARY OF REQUEST

Approve the attached Ordinance to amend the Animal Control Ordinance to regulate cats in the City.

FINANCIAL IMPACT

Total administrative costs for the entire program that will result from this ordinance is approximately \$32,000, FY 2002. Cat licensing fees will partially offset this cost (est. \$2,000).

BUDGET ACTION REQUIRED

Some of the resources are already budgeted. A budget adjustment will have to be made for Animal Control Services, which will be billed quarterly.

RECOMMENDATION

Adopt the attached ordinance.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. ____

An ordinance to provide for the control of animals including, without limitation, wild animals, dogs, cats, dangerous animals, for the confinement and handling, capture, impoundment, disposition of all animals, and providing for penalties and other relief.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Sections 3-0 through 3-17, being the text of Chapter 3 of the Code of Ordinances, are hereby completely amended to read in their entirety as follows:

3.0 Animal control.

It is determined by the city that ownership of an animal is a privilege which carries with it responsibilities to the city and all persons therein with regard to the care, custody, and handling of said animal. This ordinance shall not be construed to limit or substitute for the authority or functions of the County of Muskegon Animal Control Shelter or animal control department. The regulations set forth in this ordinance are supplemental to and not in substitution of the county animal control department, any county ordinance related thereto or the state law regarding county animal control.

3.1 Permitting animals in the city; responsibility for control.

The provisions of this ordinance shall be construed to impose the primary responsibility for compliance with its provisions on the owner, or on any person in control or the ostensible control of any animal. Both the owner and, as herein defined, the handler, shall be responsible jointly and severally for the actions of any animal and any violations of this ordinance except as provided in this ordinance, no animal may be kept or handled in the City of Muskegon.

3.2 Definitions.

3.2.1 Animal Control Authority. The County of Muskegon, and the City of Muskegon, and their designated officers. The Licensing Authority and the Animal Control Authority may be, but are not necessarily, the same entity.

3.2.2 Animal control shelter. Means a facility operated by the County Of Muskegon and, in addition, if designated and contracted, other facilities under contract with the City for the impoundment and care of animals that are found in the streets or at large, animals that are otherwise held due to the violation of a

municipal ordinance, county ordinance or state law, or animals that are surrendered to the animal control shelter.

3.2.3 Control. The term "control" means having an animal in confinement as described or required by this ordinance, or secured on a leash no greater than six feet in length, and of sufficient strength to confine the animal, or in certain cases where specified in this ordinance, a shorter leash. Control shall not mean allowing an animal to go unleashed outside of its confinement or pen, without complete control of the owner or handler. Control may mean controlling an unleashed dog except for a dangerous dog. Any person purporting to control an animal without a leash outside of its confinement bears the burden of proof that the animal was not running loose.

3.2.4 Dangerous animal. The term "dangerous animal" means any and all of the following:

3.2.4.1 Any mammal, amphibian, reptile, or fowl of a species which, due to size, vicious nature or other characteristic, would constitute a danger to human life, physical well-being or property, including but not limited to lions, tigers, leopards, panthers, bears, wolves or wolf hybrids, apes, gorillas, monkeys of a species with an average adult weigh in excess of 20 pounds, foxes, elephants, alligators, crocodiles and snakes which are poisonous or otherwise present a risk of physical harm or death to human beings as a result of their nature or physical makeup, including all constrictors.

3.2.4.2 Any dog or cat having a disposition or propensity to attack or bite any person or animal without provocation.

3.2.4.3 Any pit bull dog. The term "pit bull dog" means any dog of one of the breeds known as Staffordshire Bull Terrier, American Staffordshire Bull Terrier, or American Pit Bull Terrier, or any dog with the appearance and characteristics of being predominantly of any one of the said breeds, or combination thereof, or in combination with other breeds.

3.2.5 Handler. Any person having control of an animal, whether or not by the consent or direction of the owner.

3.2.6 Impound. The term "impound" means to place any animal in the custody or control of an animal control shelter.

3.2.7 Licensing Authority. The County of Muskegon, in accordance with state law and county ordinance, or, for cats, under contract with the city as appropriate, and in addition for cats, the City.

3.2.8 Live Stock. The term "live stock" means horses, cows, swine, sheep, goats, or any hoofed animal.

3.2.9 Poultry. The term "poultry" includes chicken, ducks, geese, pheasants, or other fowl of a type normally used for food or egg production.

3.2.10 Owner: A person having the custody of an animal or who keeps or harbors an animal, a person having the authority of the owner to be the handler of the animal, or a person who knowingly permits an animal to remain on or about any premises occupied by that person.

3.2.11 Restraint. A dog or cat shall be considered under restraint if it is within the real property limits of its owner or secured by a leash or lead or under the control of a responsible person. Any other animal is considered restrained only if it is effectively prevented from escape by appropriate means.

3.2.12 Wild Animal. Any living member of the animal kingdom, including those born or raised in captivity, except the following:

1. domestic dogs (excluding hybrids with wolves, coyotes, or jackals),
2. domestic cats (excluding hybrids with ocelots or margays),
3. ferrets,
4. rodents,
5. captive-bred species of common cage birds.

3.3 General prohibition.

The provisions of this ordinance shall be construed to impose the primary responsibility for compliance with its provisions on the owner, the handler, or on any other person in control of the animal. No animal of any kind shall be kept in the city or be present in the city in violation of the provisions of this ordinance.

3.4 Keeping of Live stock and poultry.

- 3.4.1** No livestock shall be kept permanently or temporarily in any district in the City unless affiliated with a stable, pen cage or other livestock confinement facility which meets the requirements of all applicable laws, ordinance or regulations and the best management practices of the local Cooperative Extension Office. Live stock and poultry pens, stables, cages or other confinement shall be adequately maintained in a healthful, sanitary and safe manner for the type of live stock. No live stock shall be kept in the city nor any stable or pen, cage or other livestock confinement shall be erected or maintained in

violation of the zoning ordinance. No stable or containing building shall be closer to any dwelling than 25 feet.

- 3.4.2 No live poultry shall be kept in the city except in a commercial establishments legally licensed and zoned therefor, except that one pet may be kept in a pen or confinement which is at least 25 feet from any dwelling.
- 3.4.3 No more than two rabbits shall be kept on any premises in the city, except in a commercial establishment licensed and zoned therefor. The two rabbits which may be kept at other premises shall be in a pen located at least 25 feet from any dwelling and constructed and maintained in accordance with standards published in the industry or by a 4-H organization.
- 3.4.4 No wild animal shall be kept permanently or temporarily in the City unless affiliated with a transient circus or carnival having all required permits to operate in the City, or a licensed zoo.

3.5 Licensing and Rabies Vaccination

3.5.1 No person shall own, keep, or harbor any dog or cat over four months of age within the City unless such dog or cat is vaccinated and licensed, as required by state law, county ordinance or both. The provisions of this section do not apply to animals owned by a licensed research facility or held in a veterinary medical facility or government operated or licensed animal shelter.

3.5.2 All dogs and cats shall be vaccinated against rabies, and certified as so vaccinated, as required by state law or county ordinance or both.

3.5.3 All dogs and cats kept in the city shall be licensed in accordance with state law. In the event no state law requires cats to be licensed, cats shall be licensed by the city, or if designated by the City, the County on the City's behalf. Licensing requirements and procedures shall be as follows:

3.5.3.1 Application for a license must be made within 30 days after obtaining a cat over four months of age, except that this requirement will not apply to a non-resident keeping a cat within the City for no longer than 60 days.

3.5.3.2 Written application for a cat license shall be made to the Licensing Authority and shall include the name and address of the owner and the name, breed, color, age and sex of the cat. Applicants also shall pay the prescribed licensing fee and provide proof of current rabies vaccination.

3.5.3.3 The licensing period shall be for one year. License renewal may be applied for within 60 days prior to the expiration date. New residents must apply for a license within 30 days of establishing residence.

3.5.3.4 Upon acceptance of the license application and fee, the Licensing Authority shall issue a durable license tag including an identifying number, year of issuance, city, county, and state. Both rabies and license tags must be attached to the collar of the cat. Tags must be worn at all times and are not transferable. The Licensing Authority shall maintain a record of all licenses issued. Owners of cats within the city limits of City of Muskegon may opt to use a microchip identification implanted under the cat's skin. Any cat found within city limits without a required collar or harness and tag, or without required identification, or running loose, unconfined, situated or kept in violation of this ordinance, shall be subject to impoundment.

3.6 Impoundment

3.6.1 Impoundment shall occur, where authorized by this ordinance, at the Muskegon County Animal Shelter or at an animal control shelter or other designated contracted facility licensed under MCL 287.331 to provide services to include impounding of animals delivered to the shelter by authority of the City or the County. A contract with an animal control shelter may include shelters in addition to the County Animal Shelter for services, impoundment, confinement or other functions which the County elects not to perform or is unable to perform. The services and functions of the animal control shelter are governed by state law and county ordinance, if any.

3.6.2 Any animal control shelter in which an animal is impounded shall carry on release, treatment, adoption or disposal of animals in accordance with the requirements of state law. No dog or cat shall be released for adoption to any person without being neutered. If the animal is too young to neuter at the time of adoption, the fee shall be paid for services, which shall be performed at a later date.

3.7 Interference

3.7.1 No person shall interfere with, oppose, hinder, or molest any agent of the Animal Control Authority in the performance of any duty as herein provided.

3.7.2 If seizure and impoundment of a dangerous animal is not possible without risk of serious physical harm or death to any person, the animal may be killed by a police officer or animal control officer at the time of seizure or impoundment.

3.8 Trapping and Abandonment

3.8.1 Any person or firm trapping cats within the City limit shall notify the city and post notice in the vicinity of trapping to alert residents trapping will occur.

3.8.2 Traps shall be properly constructed and used prevent animals from being in the traps for prolonged periods. Animals trapped in the City shall be promptly brought to an animal shelter for appropriate care.

3.8.3 Abandonment of animals is prohibited within the City.

3.9 Owner Responsibility

3.9.1 All dogs and cats shall be kept under restraint. Dogs or cats shall not be permitted to be at large in the City.

3.9.2 Every vicious dog or cat, as determined by a police officer or the Animal Control Authority, shall be confined by its owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.

3.9.3 The owner of every dog or cat shall be held responsible for every behavior or such dog or cat under the provisions of this ordinance.

3.9.4 Fecal matter shall be collected and removed from the area where the animal is harbored or kept.

3.10 Confinement and number of dogs and cats which may be kept.

3.10.1 *Number of dogs or cats.* In other than a permitted veterinary clinic or kennel, no person shall maintain more than three adult dogs and four adult cats in the City. Animals born on the premises to a legally confined pet may remain thereon until four months of age, after which they shall be considered adult dogs or cats.

3.10.2 All dogs kept in the city must be licensed in accordance with state law and county ordinances.

3.10.3 All cats kept in the city must be licensed in accordance with this ordinance.

3.10.4 All animals shall be confined in a pen or inside the dwelling, under conditions which are sanitary, safe and secure. Any pen utilized for the outdoor confinement of a dog shall be of sturdy and secure construction designed to prevent the escape of the dog.

3.10.5 No female animal in heat shall be confined in a place where other animals may have access or a nuisance may be created.

3.10.6 Any dog which habitually barks shall be kept inside the dwelling.

3.11 Confinement and handling of Dangerous Dogs; number.

All dangerous dogs including pit bulls and other dogs meeting the definition of a dangerous animal, shall be especially confined and treated as follows:

3.11.1 Leash and muzzle. No person shall permit a pit bull or dangerous dog to go outside its kennel or pen unless it is securely leashed with a leash no longer than four feet in length. No such dog shall be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed or tied to inanimate objects. Any such dog on a leash outside its kennel or pen must be muzzled by a muzzling device sufficient to prevent the dog from biting persons or other animals.

3.11.2 Confinement. All pit bull and dangerous dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed, muzzled and controlled as above provided. Such pen, kennel or structure must have secured sides and a secured top attached to the sides. All structures used to confine pit bull or dangerous dogs must be locked with a key or combination lock when such animals are within the structure. The structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two feet from the grade. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

3.11.3 Confinement indoors. No pit bull or dangerous dog may be kept on a porch, patio, or any part of a house or structure that would allow the dog to exit such a building. No such animal may be kept in a house or structure when the windows or screen doors are the only obstacle preventing it from exiting.

3.11.4 Signs. All owners or handlers of pit bull or dangerous dogs within the city shall display in a prominent place on the premises and on the pen or kennel a sign stating the words "Beware of Dog." The letters shall be at least three inches in height.

3.11.5 Insurance. All owners or handlers of pit bull or dangerous dogs must obtain public liability insurance in a single incident amount of at least \$50,000 for bodily injury, death or property damage resulting from the ownership, keeping or maintenance of such animal.

3.11.6 Number. No more than one dog of the breed or description determined by this ordinance as "dangerous" shall be kept on any premises in the city.

3.11.7 *Special penalties.* Violations of the requirements of the provisions above concerning dangerous and pit bull dogs shall carry special penalties set forth in this ordinance.

3.12 Confinement of other dangerous animals.

3.12.1 All other dangerous animals besides dogs shall be kept and confined in completely secure cages or containers which allow no access by any persons except by unlocking same for the feeding of the animal. Such dangerous animals shall be confined so that there is no access to any other animal or to humans by the animals.

3.12.2 *Dangerous animals specifically prohibited.* No lions, tigers, leopards, panthers, bears, wolves or wolf hybrids, apes, gorillas, monkeys in excess of 20 pounds, elephants, alligators, crocodiles, or poisonous or constrictor snakes shall be kept in the City of Muskegon, except in a licensed zoo.

3.13 Animals running loose. All animals, whether dangerous or not, shall be subject to the following:

3.13.1 No person shall allow an animal to run loose or be unconfined in the city.

3.13.2 If an animal is upon the premises of the owner, the animal shall be effectively confined as provided in this ordinance.

3.13.3 No dog shall be allowed to run on any beach, except a dog completely controlled by a person during the months of October through March, or as permitted by park rules promulgated by the city from time to time.

3.13.4 No unrestrained, unleashed or uncontrolled dog shall be allowed in any park.

3.14 Miscellaneous prohibitions.

The following actions or failures to act shall constitute violation of this ordinance, in addition to other prohibitions or violations found in this Chapter.

3.14.1 Training an animal to engage in vicious behavior.

3.14.2 Training any animal for fighting or contests with other animals; carrying on, promoting or being present at such a fighting event between animals.

3.14.3 Cruelty to any animal or poisoning an animal.

3.14.4 Molesting small wild animals, birds or birds' nests.

3.14.5 Allowing an animal to constitute a nuisance to surrounding properties or other persons in the vicinity.

3.14.6 Harboring or keeping any dog which commits frequent or habitual barking, yelping or howling.

3.14.7 Having a dog on any beach in the city, even if controlled, except for a blind person controlling a guide dog at any time, and except during the months of October through March, or except as allowed by park rules promulgated from time to time by the City.

3.14.8 Engaging in the feeding of stray cats.

3.15 Removal of animal excrement.

3.15.1 It shall be unlawful for any person to appear with any animal on public property or the private property of another, unless that person has in his or her possession an appropriate device for removal of animal excrement.

3.15.2 It shall be unlawful for any person to allow any animal to leave its excrement on any public property, or upon the private property of another, unless the excrement is promptly and thoroughly removed from the property by the use of a removal device; provided, a person may fail to remove the excrement if entry on the private property of another for said purpose is prevented by the person owning or controlling the said property.

3.16 Penalties.

Any person violating this ordinance shall be subject to one or more of the following penalties as applicable.

3.16.1 Any person violating Section 3-11 involving dangerous dogs shall be guilty of a misdemeanor, carrying a maximum penalty of 90 days in jail or \$500 fine, or both.

3.16.2 Any person violating any other prohibition of this ordinance shall be responsible for a civil infraction.

3.16.3 All persons found in violation shall be subject to further injunctive or other equitable relief as the city may determine to pursue, including destruction of the animal in question.

3.16.4 Ordinance 25-6, incorporating the Schedule of Fines for Civil Infractions is amended as to the fines for Chapter 3 of the Code of Ordinances to read as follows:

	<u>1st Offense</u>	<u>1st Repeat</u>	<u>2nd Repeat</u>
3-0 through 3-15	\$100	\$200	\$500

3.17 Fees

Fees for cat licensing and impounding shall be determined by the city commission by resolution.

This ordinance adopted:

Ayes: _____
Nays: _____

Adoption Date: _____

Effective Date: April 1, 2002.

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Gail A. Kunding, Clerk

CERTIFICATE

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 _____ day of _____, 2001, 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 Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby. Ordinance to take effect April 1, 2002.

Dated: _____, 2001

Gail A. Kunding, CMC/AAE
Clerk, City of Muskegon

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