CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 24, 2006

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**

  A. Community Relations Committee Members.

- **INTRODUCTIONS/PRESENTATION:**
- **CONSENT AGENDA:**

  A. Approval of Minutes. CITY CLERK

  B. Housing Commission Appointment. CITY MANAGER

  C. Vacation of the Alley in Block 12 of the Continental Addition. PLANNING & ECONOMIC DEVELOPMENT

  D. FIRST READING: Zoning Ordinance Amendment – Planning Commission Notice Mailing Area. PLANNING & ECONOMIC DEVELOPMENT

  E. FIRST READING: Zoning Ordinance Amendment – Aggrieved Parties Language. PLANNING & ECONOMIC DEVELOPMENT

  F. FIRST READING: Zoning Ordinance Amendment – Zoning Board of Appeals Newspaper Public Notice. PLANNING & ECONOMIC DEVELOPMENT

  G. City – Michigan Department of Transportation Agreement for the Reconstruction of Getty Street, Hovey to Keating. ENGINEERING

  H. City – Michigan Department of Transportation Agreement for Federal Money Loan to Reconstruct Getty Street, Hovey to Keating. ENGINEERING

  I. Michigan Main Street/Community Requirements and Expectations Agreement. PLANNING & ECONOMIC DEVELOPMENT

J. **Lead-Based Paint Abatement at 1122 Spring Street.** COMMUNITY & NEIGHBORHOOD SERVICES

K. **Approval of Contractor for Rehabilitation of House at 1122 Spring Street.** COMMUNITY & NEIGHBORHOOD SERVICES

- **PUBLIC HEARINGS:**

A. **Amendments to Brownfield Plan – Viridian Place at Edison Landing.** PLANNING & ECONOMIC DEVELOPMENT

B. **Request to Establish an Obsolete Property District - 67 W. Western Avenue.** PLANNING & ECONOMIC DEVELOPMENT

C. **Request to Issue an Obsolete Property Certificate - Witt Buick, 67 W. Western Avenue.** PLANNING & ECONOMIC DEVELOPMENT

- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**

A. **Donation Program for 2006 Individual Income Tax Returns.** INCOME TAX

B. **Request to Construct Improvements in Right-of-Way and Maintenance Agreement with Witt Buick.** PLANNING & ECONOMIC DEVELOPMENT

C. **Harbour Towne Dockominium.** CITY MANAGER

D. **Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following:** PUBLIC SAFETY

856 Fork – Area 11

775 Washington – Area 12

1957 Continental

- **ANY OTHER BUSINESS:**
- **PUBLIC PARTICIPATION:**

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

- **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 LINDA POTTER, ACTING CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

You Are Cordially Invited
To
City of Muskegon
Volunteer Appreciation
Reception
October 24, 2006
4:30 p.m.
Muskegon City Hall
933 Terrace Street
RSVP to 724-6705

Date: **October 24, 2006**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk**

RE: **Approval of Minutes**

SUMMARY OF REQUEST: To approve minutes for the October 9th Commission Worksession, and the October 10th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 24, 2006

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 5:30 p.m., Tuesday, October 24, 2006.

Mayor Warmington opened the meeting with a prayer from Vice Mayor Gawron after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioner Chris Carter, Kevin Davis, Clara Shepherd, and Lawrence Spataro, City Manager Bryon Mazade, City Attorney John Schrier, and Acting City Clerk Linda Potter.

Absent: Commissioner Sue Wierengo (excused)

HONORS AND AWARDS:

A. Community Relations Committee Members. Mayor Warmington recognized and thanked the committee members for their service.

2006-87 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the October 9th Commission Worksession, and the October 10th Regular Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Housing Commission Appointment. CITY MANAGER

SUMMARY OF REQUEST: To appoint Angela Anthony to the Housing Commission as the Resident Commissioner, to serve out the remaining term (expires 1/31/07) of Bobbie Jones who no longer resides at Hartford Terrace.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To confirm the appointment.

C. **<u>Vacation of the Alley in Block 12 of the Continental Addition.</u>** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request for vacation of the alley located in Block 12, Continental Addition bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue, and Huizenga Street.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends vacation of the alley, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION: The Planning Commission recommended vacation of the alley at their October 12th meeting, with the condition that all utility easement rights be retained. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

D. **<u>FIRST READING: Zoning Ordinance Amendment – Planning Commission Notice Mailing Area.</u>** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2405 (Petitions, Fees, paragraph #2) of Article XXIV (Administration and Enforcement) regarding the 300 foot notice mailing area for Planning Commission public hearings.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend the language for Planning Commission public hearing notices.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their October 12th meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

(Requires second reading)

E. **<u>FIRST READING: Zoning Ordinance Amendment – Aggrieved Parties Language.</u>** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2503 (Appeals, Applications, Filing Procedure and Fees, paragraph #1) of Article XXV (Zoning Board of Appeals) regarding "aggrieved parties" language.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend the language for "aggrieved parties".

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their October 12th meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

(Requires second reading)

F. **FIRST READING: Zoning Ordinance Amendment – Zoning Board of Appeals Newspaper Public Notice.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2504 (Hearings, Notices, and Adjournments, #1) of Article XXV (Zoning Board of Appeals) regarding newspaper public notice for Zoning Board of Appeals public hearings.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend the language regarding newspaper notice of Zoning Board of Appeals public hearings.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their October 12th meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

(Requires second reading)

G. **City – Michigan Department of Transportation Agreement for the Reconstruction of Getty Street, Hovey to Keating.** ENGINEERING

SUMMARY OF REQUEST: To approve the contract with Michigan Department of Transportation for the reconstruction of Getty Street from Hovey Avenue to Keating Avenue and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the federal funds of $467,448 and $116,862 of state funds for a total grant of $584,310. The estimated total construction cost, without engineering, including the non-participating item of watermain is $750,200. The engineering cost is estimated at 15% of the construction cost, which would be split equally with the City of Muskegon Heights.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water funds as shown in the 2007 budget.

STAFF RECOMMENDATION: Approve the contract and resolution and authorize the Mayor and Clerk to sign both.

H. **<u>City – Michigan Department of Transportation Agreement for Federal Money Loan to Reconstruct Getty Street, Hovey to Keating.</u>** ENGINEERING

SUMMARY OF REQUEST: To approve the contract with Michigan Department of Transportation for the reconstruction of Getty Street from Hovey Avenue to Keating Avenue and to approve the resolution authorizing the Mayor and Clerk to sign the contract. As part of the "jobs today's program" the state made available to local governments the ability to advance construct projects on the 2007 and 2008 transportation plan by lending the federal allocation for those projects as long as the local governments agreed to two conditions:

1. The projects would be advertised and awarded a year ahead of their scheduled time (Getty was scheduled for 2007 and we completed the design in 2006).
2. The local governments would have to enter into the agreement with the state which outlines the terms and conditions of the loan.

The advantage on this project is that this whole agreement is merely a paper work matter since the city could not have spent any money against the federal funds to accrue any interest since the actual construction will take place in the 2007 fiscal year.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water funds as shown in the 2007 budget.

STAFF RECOMMENDATION: Approve the contract and resolution and authorize the Mayor and Clerk to sign both.

I. **<u>Michigan Main Street/Community Requirements and Expectations Agreement.</u>** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The Michigan Economic Development Corporation (MEDC) requires that the local community (i.e., City of Muskegon) enter into an agreement with the local Main Street Board and MEDC. The Commission approved the Agreement in 2005. However, the Michigan Main Street has revised the Agreement from three years to five years. They have also made the reporting requirements stricter. Therefore, the Commission is being asked to approve the new Agreement. The Agreement outlines the support to be provided. There is no financial obligation by the City of Muskegon to support the program. The commitments relate to cooperation and support. If, for some reason, the Agreement is not adhered to, the only repercussion is that the Agreement would be null and void.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Agreement and authorize the City Manager to sign.

J. **Lead-Based Paint Abatement at 1122 Spring Street.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the contract with Success Enterprise of 2722 East Broadway, Michigan, for the lead base paint abatement of the city-owned home at 1122 Spring for the cost of $24,400. The City received two additional bids:

- Specialty Builders, 2434 Annette, Muskegon, MI for $25,650
- Statewide Abatement, 1720 Creston, North Muskegon, MI for $27,810

After the lead base paint abatement is complete, the structure will be totally rehabilitated and then sold to a qualified low to moderate income homebuyer. The structure at 1122 Spring is a part of the Community and Neighborhood Services departments' Operation R & R (Resurgence and Reawakening), which is an attempt to rehabilitate ten houses throughout the City before the end of this fiscal year.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2006-2007 HOME budget.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve Community and Neighborhood Services office to develop a contract with Success Enterprises of Muskegon, Michigan, and direct the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: The Operation R & R project was approved by the Land Reutilization Committee.

K. **Approval of Contractor for Rehabilitation of House at 1122 Spring Street.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the contract with Beattie Bros. Construction LLC, 2786 Holton-Whitehall Road, Twin Lake, MI for the completion of the rehabilitation to be located at 1122 Spring Street for the cost of $43,065. After the total rehabilitation is completed, the home will be sold to a qualified first-time homebuyer; continuing the City's aggressive neighborhood revitalization efforts in the McLaughlin Neighborhood area under the Operation: Spring Street Reawakening. This is under the umbrella of Operation R & R (Resurgence and Reawakening) which is a planned rehabilitation blitz by the Community and Neighborhood Services department to rehabilitate ten houses throughout the City before May 31, 2006.

The City received three additional bids:

- Obenauf DePender Construction LLC, 4471 Thompkins Trail, Muskegon, MI, for $45,195

- Specialty Builders, 2434 Annette Ave., Muskegon, MI, for $55,195
- J2 Development & Construction, 109 West Laketon Avenue, Muskegon, MI, for $60,894

FINANCIAL IMPACT: The funding for the project will be taken from the City's 2006-2007 HOME funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Community and Neighborhood Services office to develop a contract with Beattie Bros. Construction of Twin Lake, MI, and direct the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: Operation R & R was approved by the Land Reutilization Committee.

Motion by Commissioner Carter, second by Commissioner Davis to approve the Consent Agenda as read.

ROLL VOTE: Ayes: Davis, Gawron, Shepherd, Spataro, Warmington, and Carter

Nays: None

MOTION PASSES

2006-88 PUBLIC HEARINGS:

A. <u>**Amendments to Brownfield Plan – Viridian Place at Edison Landing.**</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution approving and adopting amendments for the Brownfield Plan. The amendments are for the inclusion of property owned by Edison Landing Lot I, LLC ("ELLI") in the Brownfield Plan.

FINANCIAL IMPACT: There is no direct financial impact in approving the Brownfield Plan amendments, although the redevelopment of the property into a mixed-use development will add to the tax base of the City of Muskegon.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To hold the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for October 24, 2006, at their September 26, 2006, meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions, and it has been published twice in the Muskegon Chronicle. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on September 18, 2006, and further recommends that the Muskegon City Commission approve the Plan amendment.

The Public Hearing opened at 5:48 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Commissioner Carter, second by Commissioner Shepherd to close the Public Hearing at 5:52 p.m. and approve the amendments to the Brownfield Plan for Viridian Place at Edison Landing.

ROLL VOTE: Ayes: Gawron, Shepherd, Spataro, Warmington, Carter, and Davis

Nays: None

MOTION PASSES

B. Request to Establish an Obsolete Property District - 67 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Witt Buick, 67 W. Western Avenue, Muskegon, MI 49442, has requested the establishment of an Obsolete Property District. The district would be located at 67 W. Western Avenue, Muskegon, MI. Total capital investment for this project is $60,000.

FINANCIAL IMPACT: If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval.

The Public Hearing opened at 5:55 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Commissioner Spataro, second by Commissioner Shepherd to close the Public Hearing at 5:59 p.m. and approve the request to establish an Obsolete Property District at 67 W. Western Avenue.

ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Carter, Davis, and Gawron

Nays: None

MOTION PASSES

C. Request to Issue an Obsolete Property Certificate - Witt Buick, 67 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Witt Buick, 67 W. Western Avenue, Muskegon, MI has requested the issuance of an Obsolete Property Certificate for the property located at 67 W. Western Avenue, Muskegon, MI. Total capital investment for this project is $60,000. Because of the amount of investment, the applicant is eligible for an eight-year certificate.

FINANCIAL IMPACT: If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval.

The Public Hearing opened at 6:01 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Vice Mayor Gawron, second by Commissioner Carter to close the Public Hearing at 6:03 p.m. and issue an Obsolete Property Certificate to Witt Buick at 67 W. Western Avenue for eight years.

ROLL VOTE: Ayes: Spataro, Warmington, Carter, Davis, Gawron, and Shepherd

Nays: None

MOTION PASSES

2006-89 NEW BUSINESS:

A. **Donation Program for 2006 Individual Income Tax Returns.** INCOME TAX

SUMMARY OF REQUEST: Approval to designate donations from the 2006 income tax returns towards the upkeep of the Dog Park or the Muskegon's Smith Ryerson Recreational Center. Income tax refunds voluntarily donated from taxpayers will go to either the Dog Park or the Recreational Center.

FINANCIAL IMPACT: The average amount collected each year is $2,000.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval recommended.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the designated donations from the 2006 income tax returns to go to the Smith Ryerson Recreational Center.

ROLL VOTE: Ayes: Warmington, Carter, Davis, Gawron, Shepherd, and Spataro

Nays: None

MOTION PASSES

B. **Request to Construct Improvements in Right-of-Way and Maintenance Agreement with Witt Buick.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Witt Buick, 67 W. Western Avenue, Muskegon, MI 49442, has requested to be allowed to construct certain improvements on the City rights-of-way at the locations on the map.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the maintenance agreement, allowing Witt Buick to construct improvements on the City rights-of-way.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to approve the maintenance agreement with Witt Buick.

ROLL VOTE: Ayes: Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

Nays: None

MOTION PASSES

C. <u>Harbour Towne Dockominium.</u> CITY MANAGER

SUMMARY OF REQUEST: To approve an agreement with Harbour Towne Commercial Development and Harbour Towne Marina Association to complete a development component of the Harbour Towne Condominium project.

FINANCIAL IMPACT: $3,000

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the agreement.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to approve the agreement with Harbour Towne Commercial Development and Harbour Towne Marina Association to complete a development component of the Harbour Towne Condominium project.

ROLL VOTE: Ayes: Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

Nays: None

MOTION PASSES

D. **<u>Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following:</u>** PUBLIC SAFETY

856 Fork – Area 11 (*REMOVED PER STAFF REQUEST*)

775 Washington – Area 12

1957 Continental

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: General Funds

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 1957 Continental.

ROLL VOTE: Ayes: Davis, Gawron, Shepherd, Spataro, Warmington, and Carter

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Commissioner Carter to concur with the Housing Board of Appeals notice and order to demolish 775 Washington, but not proceed with the demolition for 60 days allowing it to be brought up to code.

ROLL VOTE: Ayes: Gawron, Shepherd, Spataro, Warmington, Carter, and Davis

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commission discussed various items.

PUBLIC PARTICIPATION: Various comments were heard from the public.

ADJOURNMENT: The City Commission Meeting adjourned at 6:40 p.m.

Respectfully submitted,

Linda Potter

Linda Potter, CMC
Acting City Clerk

AGENDA ITEM NO. ___________________

CITY COMMISSION MEETING __________________________

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: October 16, 2006

RE: Housing Commission Appointment

SUMMARY OF REQUEST:
To appoint Angela Anthony to the Housing Commission as the Resident Commissioner, to serve out the remaining term (expires 1/31/07) of Bobbie Jones who no longer resides at Hartford Terrace.

FINANCIAL IMPACT:
None.

BUDGET ACTION REQUIRED:
None.

STAFF RECOMMENDATION:
To confirm the appointment.

COMMITTEE RECOMMENDATION:
None.

Commission Meeting Date: October 24, 2006

Date: **October 13, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Vacation of the alley in Block 12 of the Continental Addition**

SUMMARY OF REQUEST:

Request for vacation of the alley located Block 12, Continental Addition bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue, and Huizenga Street.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends vacation of the alley, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended vacation of the alley at their 10/12/06 meeting, with the condition that all utility easement rights be retained. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

RESOLUTION #2006-87(b)

RESOLUTION TO VACATE A PUBLIC ALLEY

WHEREAS, a petition has been received to vacate the alley in Block 12, Continental Addition, bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue and Huizenga Street; and,

WHEREAS, the Planning Commission held a public hearing on October 12, 2006, to consider the petition and, subsequently, recommended the vacation; and,

WHEREAS, due notice had been given of said hearing as well as the October 24, 2006, City Commission meeting to consider the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Commission deems it advisable for the public interest to vacate and discontinue the alley in Block 12, Continental Addition bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue, and Huizenga Streeet, County of Muskegon, State of Michigan.

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said alley vacated and discontinued, provided, however, that this action on the part of the City Commission shall not operate so as to conflict with fire access or the utility rights heretofore acquired by the City or by any public service utility in the City of Muskegon operating in, over and upon said portion of alley hereby vacated, and it is hereby expressly declared that such rights shall remain in full force and effect.

BE IT FURTHER RESOLVED that after any maintenance and repair by the City, the City shall restore the disturbed area to the grade and paving in existence at the time of vacation. The City shall not be responsible to replace special planting, landscaping, fences or any structure. No structure shall be placed in the easement which, in the sole judgment of the City, will interfere with the repair or maintenance of utilities in the easement, public or private.

Adopted this 24th day of October, 2006.

Ayes: Davis, Gawron, Shepherd, Spataro, Warmington, Carter

Nays: None

Absent: Wierengo

By: [signature]
Stephen J. Warmington, Mayor

Attest: Linda S. Potter
Linda S. Potter, CMC, Acting City Clerk

2006-87(b)
CERTIFICATION

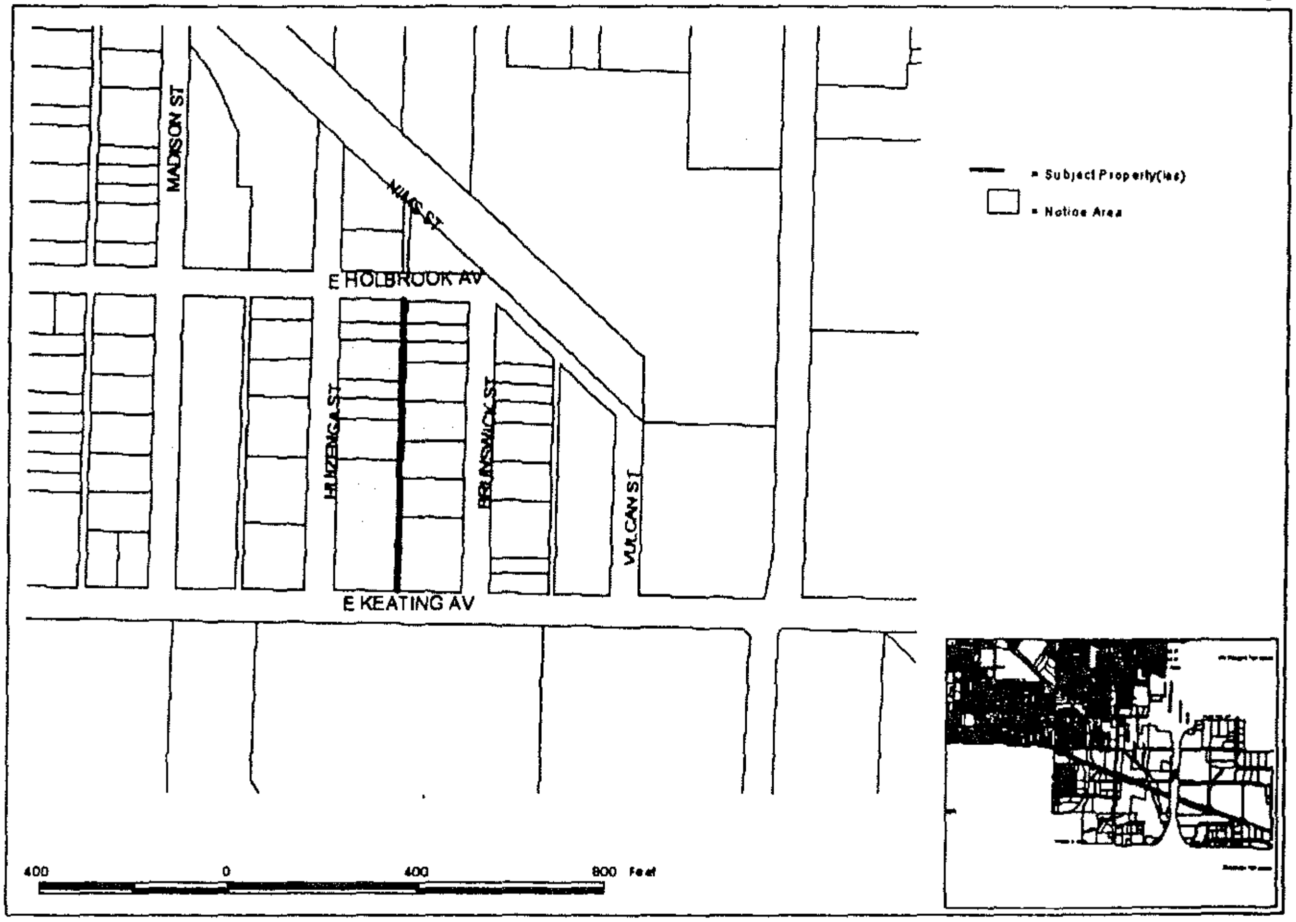
(Vacation of alley in Block 12 of the Continental Addition)

I hereby 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 October 24, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting Clerk, City of Muskegon

City of Muskegon
Planning Commission
Case # 2006-46



Staff Report [EXCERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING
October 12, 2006

Hearing; Case 2006-46: Request to vacate the alley in Block 12 of the Continental Addition bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue, and Huizenga Street, by Tri-State Aluminum.

BACKGROUND

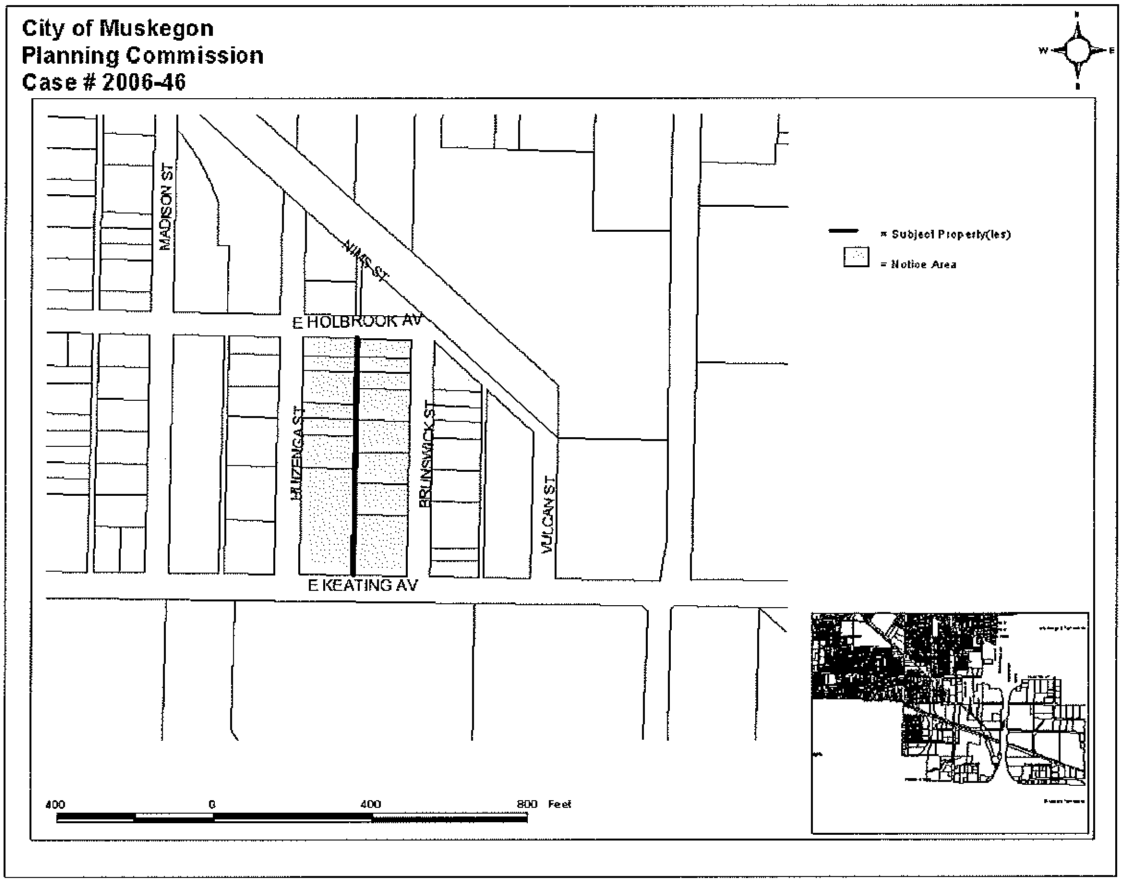
The alley splits the two parcels that are owned by Tri-State Aluminum. Conducting business would be much easier for the applicant, if this alley was vacated. No homes bordering the alley need access from it for either a garage or driveway. They all have access off either Brunswick or Huizenga. The alley appears to be used very little, if at all, on the residential end.

The Fire Department and DPW has no issues with this vacation. The Engineering Department had no comments regarding this request.

Staff has received no comments regarding this request.

Alley looking north from E. Keating Ave.

Alley looking south from E. Holbrook.



RECOMMENDATION

Staff recommends approval of the request, subject to the conditions offered below.

DELIBERATION

I move that the vacation of the alley located in Block 12 of the Continental Addition, bounded by E. Keating Avenue, Brunswick Street, E. Holbrook Avenue, and Huizenga Street, be recommended to the City Commission for (approval/denial), based on (compliance/lack of compliance), with the City's 1997 Master Land Use Plan, with the following conditions:

1. All utility easements will be retained.

Commission Meeting Date: October 24, 2006

Needs 2nd Reading

Date:	**October 13, 2006**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development** CBC
RE:	**Zoning Ordinance Amendment – Planning Commission Notice Mailing Area**

SUMMARY OF REQUEST:

Request to amend Section 2405 (Petitions, Fees, paragraph #2) of Article XXIV (Administration and Enforcement) regarding the 300 foot notice mailing area for Planning Commission public hearings.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend the language for Planning Commission public hearing notices.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 10/12 meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

Needs 2nd Reading

Commission Meeting Date: October 24, 2006

Date:	**October 13, 2006**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development** CRL
RE:	**Zoning Ordinance Amendment – Aggrieved Parties Language**

SUMMARY OF REQUEST:

Request to amend Section 2503 (Appeals, Applications, Filing Procedure and Fees, paragraph #1) of Article XXV (Zoning Board of Appeals) regarding "aggrieved parties" language.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend the language for "aggrieved parties".

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 10/12 meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

Needs 2nd Reading

Commission Meeting Date: October 24, 2006

Date:	**October 13, 2006**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development** CBC
RE:	**Zoning Ordinance Amendment – ZBA Newspaper Public Notice**

SUMMARY OF REQUEST:

Request to amend Section 2504 (Hearings, Notices, and Adjournments, #1) of Article XXV (Zoning Board of Appeals) regarding newspaper public notice for Zoning Board of Appeals public hearings.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend the language regarding newspaper notice of ZBA public hearings.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 10/12 meeting. The vote was unanimous with T. Harryman, S. Warmington, and J. Aslakson absent.

Date: **October 24, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Engineering**

RE: **City – MDOT Agreement for the reconstruction of: Getty Street, Hovey Ave. to Keating Ave.**

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Getty Street from Hovey Ave. to Keating Ave. and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the federal funds of $467,448.00 & $116,862.00 of state funds for a total grant of $584,310. The estimated total construction cost, without engineering, including the non-participating item of watermain is $750,200. the engineering cost is estimated at 15% of the construction cost, which would be split equally with the City of Muskegon Heights.

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water funds as shown in the 2007 budget.

STAFF RECOMMENDATION:

Approve the attached contract and resolution and authorize the mayor & clerk to sign both.

COMMITTEE RECOMMENDATION:

RESOLUTION 2006-87(g)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF GETTY STREET FROM HOVEY AVE. TO KEATING AVE. AVE. ALONG WITH WATER AND SIDEDWALK WORK TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

Moved by Commissioner Carter and supported by

Commissioner Davis that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-6470** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Getty Street from Hovey Ave. to Keating Ave.** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **06-6470** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24th day of October, 2006.

BY [signature]

Stephen J. Warmington, Mayor

ATTEST Linda S. Potter

Linda S. Potter, Acting City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on October 24, **2006**. 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 Linda Potter

Linda Potter, Acting City Clerk

CAB

Control Section:	STUL 61407
Job No.:	84364
Project:	STP 0661(025)
Federal Item No.:	RR 5346
CFDA No.:	20.205 (Highway Research Planning & Construction)
Contract No.:	06-6470

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF MUSKEGON

LOCAL JOBS TODAY PROGRAM

LOAN CONTRACT

THIS LOAN CONTRACT, hereinafter referred to as the "CONTRACT," is made and entered into this date of ____________________ by and between the Michigan Department of Transportation, of 425 West Ottawa Street, P.O. Box 30050, Lansing, MI 48909, hereinafter referred to as the "DEPARTMENT," and the CITY OF MUSKEGON, MICHIGAN, of 933 Terrace Street, P.O. Box 536, Muskegon, MI 49443-0536, hereinafter referred to as the "RECIPIENT."

WITNESSETH:

WHEREAS, Act 51, Public Acts of 1951, as amended, authorizes the DEPARTMENT to enter into contracts with boards of county road commissioners, incorporated cities, and villages for the loaning of funds for the purpose of constructing transportation infrastructure improvements, as described in the second paragraph of Article IX, Section 9, of the Michigan Constitution of 1963, as amended;

NOW, THEREFORE, the parties agree to the following:

Section 1. PURPOSE

The purpose of this CONTRACT is to assist the RECIPIENT in financing transportation infrastructure improvements, as described in the second paragraph of Article IX, Section 9, of the Michigan Constitution of 1963, as amended, through the project described below, hereinafter referred to as the "PROJECT." Such assistance will be provided by the DEPARTMENT in the form of a loan. Funds will be used for pre-approved purposes only. The DEPARTMENT has the discretion and the authority to recall, freeze, or limit disbursement of any funds or a portion thereof if the purpose or manner of expenditure by the RECIPIENT is inconsistent with this CONTRACT and/or with federal or state laws, regulations, rules, or policies.

Reconstruction work along Getty Street from Hovey Avenue to Keating Avenue; including pavement removal, concrete curb and gutter, sidewalk ramps, storm sewer, drainage structure adjustment, hot mix asphalt paving, and pavement marking work; and all together with necessary related work.

Section 2. CONTRACT TERM

This CONTRACT will be in effect from the date of award through September 30, 2009.

Section 3. PROJECT FUNDING, BILLINGS, AND PAYMENTS

The DEPARTMENT will loan the RECIPIENT $467,448. The RECIPIENT will pay interest at the rate of 4 percent annually. The loan funds will be used only for the PROJECT. The DEPARTMENT will retain the loan funds and make payments to PROJECT contractors and subcontractors on the RECIPIENT's behalf. The RECIPIENT directs the DEPARTMENT to convert federal advanced construction funds as soon as they become available. The assessment of interest will begin when the DEPARTMENT expends loan funds on the RECIPIENT's behalf. It is understood that the loan funds provided under this CONTRACT will not be sufficient to pay all PROJECT costs.

The loan under this CONTRACT is subject to the RECIPIENT's repayment in the following manner: federal aid reimbursement applicable to the PROJECT will be used to pay principal on the loan, and the DEPARTMENT will invoice the RECIPIENT annually for the actual amount of interest. The invoiced amounts will be due and payable within thirty days. Final payment of all principal and interest on the loan must be made on or before September 30, 2009.

If the RECIPIENT fails to make any of its required payments when they are due, the DEPARTMENT will immediately notify the RECIPIENT of such default and of the amount thereof, and if such default is not corrected by payment within ten (10) days, the DEPARTMENT is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the RECIPIENT from the Michigan Transportation Fund, but only after sufficient money has been returned to the county road commission, city, or village to provide for the payment of contractual obligations incurred or to be incurred and principal and interest on notes or bonds issued or to be issued under 1941 PA 205, 1943 PA 143, 1952 PA 175, or Section 18c or 18d of 1951 PA 51, sufficient monies to remove the default and to credit the RECIPIENT with payment thereof and to notify the RECIPIENT in writing of such fact.

The RECIPIENT agrees that the costs reported to the DEPARTMENT for this CONTRACT will represent only those items that are properly chargeable in accordance with this CONTRACT. The RECIPIENT also certifies that it has read the CONTRACT terms and has made itself aware of the applicable laws, regulations, and terms of this CONTRACT that apply to the reporting of costs incurred under the terms of this CONTRACT.

Section 4. ADMINISTRATION

The DEPARTMENT will administer all phases of the PROJECT on behalf of the RECIPIENT, including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT, in accordance with the Local Agency Cost Participation Contract, as described in Section 9.

Any change in the scope or character of the PROJECT or in the cost, term, or other provision of the CONTRACT will be by a prior written amendment to this CONTRACT awarded by the parties.

In case of any discrepancies between the body of this CONTRACT and any exhibits hereto, the body of the CONTRACT will govern. The headings used in this CONTRACT are for convenience and identification purposes only and do not form a binding part of this CONTRACT.

Section 5. COMPLIANCE ACTIVITIES

The RECIPIENT will, in the performance of this CONTRACT, comply with and require its contractors and subcontractors to comply with all applicable federal, state, and local statutes, ordinances, and regulations and will obtain or have its contractors and subcontractors obtain all permits that are applicable to the entry into and performance of this CONTRACT.

The RECIPIENT will secure any agreements or approvals from railroad companies, utility companies, governmental agencies, or private parties required for construction of the PROJECT.

This CONTRACT will be interpreted, construed, and enforced in accordance with the laws of the State of Michigan.

By signing this CONTRACT, the RECIPIENT certifies that it has obtained or will obtain all necessary environmental protection permits and clearances prior to the beginning of the construction of the PROJECT.

Section 6. BREACH AND TERMINATION

In the event that any of the following occur, the DEPARTMENT may consider the RECIPIENT to be in default with respect to this CONTRACT:

a. The RECIPIENT misrepresents any documentation or information provided to the DEPARTMENT to secure loan financing.

b. The RECIPIENT fails to make a payment of any installment of interest under this CONTRACT or fails to make a due payment of any other debt or obligation now or later owed by RECIPIENT to the DEPARTMENT.

c. The RECIPIENT defaults in the performance of any other obligation to the DEPARTMENT under this CONTRACT.

d. The RECIPIENT becomes insolvent or makes an assignment for the benefit of creditors.

e. Any guarantee or pledge made by the RECIPIENT that now or later secures payment for any or all indebtedness arising from this CONTRACT becomes terminated or limited for any reason (except as otherwise set forth herein or in 1951 PA 51) without the prior written consent or agreement of the DEPARTMENT.

f. At any time the DEPARTMENT, acting in good faith, has cause to believe that the prospect of payment or performance under this CONTRACT is impaired.

In the event that the RECIPIENT fails to comply with the provisions of this CONTRACT, including the default provisions herein, and such noncompliance by the RECIPIENT continues for a period of ten (10) days after written notification of such noncompliance without an effort by the RECIPIENT to begin to diligently pursue remedies for such noncompliance, the DEPARTMENT will have the right, at its option and notwithstanding any waiver by the DEPARTMENT or any prior noncompliance, to demand the immediate return of the full outstanding balance of the loan financing and to terminate this CONTRACT.

The exercise of such right by the DEPARTMENT will not impair any other rights of the DEPARTMENT under this CONTRACT or any rights of action against the RECIPIENT for the collection of remaining monies due the DEPARTMENT and/or the recovery of damages.

Section 7. CONTRACTUAL OBLIGATIONS

Both parties will make reasonable efforts to satisfy promptly their surviving obligations to each other necessary to complete their contractual relationships after expiration or termination of this CONTRACT. This provision is not intended to nor does it create or confer any rights upon any person or entity not a party to this CONTRACT.

Section 8. PERFORMANCE RESPONSIBILITY

Each party to this Contract will remain responsible for any claims arising out of that party's performance of this Contract, as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

Section 9. LOCAL AGENCY COST PARTICIPATION CONTRACT

The DEPARTMENT and the RECIPIENT agree that, with respect to the PROJECT, the RECIPIENT will enter into a Local Agency Cost Participation Contract consisting of Part

I and Part II (Standard Agreement Provisions) with the DEPARTMENT prior to the disbursement of loan funds.

Section 10. NOTICES

All notices required hereunder will be in writing and will be deemed to have been duly given if personally delivered or sent by certified mail, return receipt requested, postage paid, or by telegram addressed as shown below, or by confirmed facsimile machine message, unless notified differently in writing by the other party.

If to the DEPARTMENT:

Michigan Department of Transportation
Financial Operations Division
425 West Ottawa Street
P.O. Box 30050
Lansing, MI 48909

If to the RECIPIENT:

City of Muskegon
933 Terrace Street, P.O. Box 536
Muskegon, MI 49443-0536

Section 11. SEVERABILITY

If any term, covenant, condition, or provision (or any part thereof) of this CONTRACT or the application thereof to any party or circumstance will at any time or to any extent be held to be invalid or unenforceable, the remainder of this CONTRACT or the application of such term or provision (or remainder thereof) to parties or circumstances other than those to which it is held to be invalid or unenforceable will not be affected thereby, and each term, covenant, condition, and provision of this CONTRACT will be valid and will be enforced to the fullest extent permitted by law.

Section 12. ASSIGNMENT

This CONTRACT may not be assigned without the express prior written approval of the non-assigning party, which approval will not be unreasonably withheld.

Section 13. ACCESS AND AUDIT

a. The RECIPIENT will establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this CONTRACT, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this CONTRACT.

b. The RECIPIENT will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this CONTRACT. In the event of a dispute with regard to the allowable expenses or any other issue under this CONTRACT, the RECIPIENT will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

c. The RECIPIENT will allow the DEPARTMENT or its representative to inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

d. The RECIPIENT will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 U.S.C. 7501-7507).

e. The RECIPIENT will comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

   i. Recipients expending a total of Five Hundred Thousand Dollars ($500,000.00) or more in federal funds from one or more funding sources in their fiscal year will submit two (2) copies to the address in part ii below:

      - The Reporting Package
      - The Data Collection Form
      - The audit firm management letter to the recipient, if issued.

      The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

   ii. Recipients expending less than Five Hundred Thousand Dollars ($500,000.00) in federal funds must submit a letter to the DEPARTMENT advising that an OMB Circular A-133 audit was not required. The letter will indicate the applicable fiscal year, the amount of federal funds spent, and the name(s) of the DEPARTMENT federal programs. This information must also be submitted to the address below.

      Address: Michigan Department of Transportation
      Financial Operations Division
      425 West Ottawa Street
      P. O. Box 30050
      Lansing, MI 48909

   iii. Recipients must also comply with applicable state laws and regulations relative to audit requirements.

iv. Recipients will not charge audit costs to the DEPARTMENT's federal programs that are not in accordance with the aforementioned OMB Circular A-133 requirements.

v. All recipients are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.

f. If any part of the work is subcontracted, the RECIPIENT will assure compliance with subsections (a), (b), (c), (d), and (e) above for all subcontracted work.

Section 14. PROHIBITION OF DISCRIMINATION

a. In connection with the performance of the PROJECT under this CONTRACT, the RECIPIENT (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this CONTRACT.

b. During the performance of this CONTRACT, the RECIPIENT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts related to this CONTRACT.

Section 15. ASSIGNMENT OF ANTITRUST RIGHTS

With regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT, the RECIPIENT hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The RECIPIENT shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The RECIPIENT shall notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT may have occurred or is threatened to occur. The RECIPIENT shall also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT.

Section 16. AWARD CONTINGENCY

Award of this CONTRACT will be contingent upon the RECIPIENT providing the DEPARTMENT with a duly adopted resolution authorizing a representative of the RECIPIENT to award this CONTRACT and undertake the PROJECT.

Section 17. FEDERAL TAX CODE

The RECIPIENT is a political subdivision of the State of Michigan that qualifies as a "government unit" within the meaning of Sections 141(b)(6)(A) and 141(c)(1) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the "CODE."

The RECIPIENT hereby covenants and agrees for the benefit of the DEPARTMENT that it will comply with the applicable requirements of Section 149 of the CODE.

The RECIPIENT will not permit at any time or times any of the property financed with the proceeds of the loan funds that would result in the exclusion of any bonds of the DEPARTMENT from the treatment afforded by Section 103(a) of the CODE, as from time to time amended, by reason of the classification of such bonds as "private activity bonds" within the meaning of Section 141(a) of the CODE, or as obligations guaranteed by the United States of America, as provided in Section 149(b) of the CODE, or cause interest on the bonds to be includable in gross income for federal income tax purposes.

Section 18. AWARD

This CONTRACT will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the RECIPIENT and the DEPARTMENT and upon adoption of a resolution approving said CONTRACT and approving the signature(s) thereto of the respective representative(s) of the RECIPIENT, a certified copy of which resolution will be sent to the DEPARTMENT with this CONTRACT, as applicable.

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be awarded.

CITY OF MUSKEGON

By: ______________________

Title: Mayor

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: ______________________

Title: Department Director

9/29/06

REVIEWED 9-28-06

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.

6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

(Rev. 03/92)

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Date: **October 24, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Engineering**

RE: **City – MDOT Agreement for:**
Federal money loan to reconstruct
Getty Street, Hovey Ave. to Keating Ave.

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Getty Street from Hovey Ave. to Keating Ave. and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

As part of the "jobs today's program" the state made available to local governments the ability to advance construct projects on the 2007 & 2008 transportation plan by lending the federal allocation for those projects as long as the local governments agreed to two conditions;

1- The projects would be advertised and awarded a year ahead of their scheduled time (Getty was scheduled for 2007 and we completed the design in 06).

2- The local governments would have to enter into the attached agreement with the state which outlines the terms and conditions of the loan.

The advantage on this project is that this whole agreement is merely a paper work matter since the city could not have spent any money against the federal funds to accrue any interest since the actual construction will take place in the 2007 fiscal year.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water funds as shown in the 2007 budget.

STAFF RECOMMENDATION:

Approve the attached contract and resolution and authorize the mayor & clerk to sign both.

COMMITTEE RECOMMENDATION:

RESOLUTION 2006-87(h)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF GETTY STREET FROM HOVEY TO KEATING AVE. ALONG WITH WATER AND SIDEDWALK WORK TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND ACTING CITY CLERK LINDA POTTER TO EXECUTE SAID CONTRACT

Moved by Commissioner Carter and supported by

Commissioner Davis that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-5470** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Getty Street from Hovey Ave. to Keating Ave.** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **06-5470** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24th day of October, 2006.

BY [signature]

Stephen J. Warmington, Mayor

ATTEST Linda S. Potter

Linda S. Potter, Acting City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on October 24, **2006**. 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 Linda Potter

Linda Potter, Acting City Clerk

(ADVANCE CONSTRUCTION CONTRACT)
STP & LJT

	CAB
Control Section	STUL 61407
Job Number	84364
Project	STP 0661(025)
Federal Item No.	RR 5346
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	06-5470

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of ______________________, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated September 27, 2006, attached hereto and made a part hereof:

PART A – FEDERAL AND STATE PARTICIPATION
Reconstruction work along Getty Street from Hovey Avenue to Keating Avenue; including pavement removal, concrete curb and gutter, sidewalk ramps, storm sewer, drainage structure adjustment, hot mix asphalt paving, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL OR STATE PARTICIPATION
Watermain work along Getty Street from Hovey Avenue to Keating Avenue; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal and State law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the PROJECT has been approved for financing in part with State Local Jobs Today Program Funds; and

WHEREAS, the PROJECT will be performed as an advance construction project; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

SURFACE TRANSPORTATION PROGRAM

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

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

The PROJECT work shall be performed as an advance construction PROJECT and shall meet applicable Federal requirements set forth on 23 CFR Subpart G; 23 U.S.C. 115.

It is understood that authorization to undertake the performance of the work under this contract as an advance construction PROJECT does not constitute any commitment of DEPARTMENT or Federal Funds for this PROJECT.

Expenditures incurred on this PROJECT as advance construction will not be subject to reimbursement with Federal Funds until the PROJECT is converted to a regular Federal-aid project as provided under 23 CFR 630.705(2); CFR 630.709.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT.

Costs for construction engineering and inspection incurred by the DEPARTMENT will be charged 100 percent to the REQUESTING PARTY. Any other costs incurred by the DEPARTMENT as a result of this contract will be at PROJECT COST.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

<u>PART A</u>
The PART A portion of the PROJECT COST shall be met in part by contributions by the State Local Jobs Today Program and the REQUESTING PARTY.

State Local Jobs Today Grant Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed $116,862. The balance of the PART A portion of the PROJECT COST, after deduction of State Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Contingent upon availability of Federal Funds and Federal approval, Federal Surface Transportation Funds, for future fiscal years, may be applied to that portion of the PART A cost incurred as advance construction in an amount such that the Federal Surface Transportation Funds equal a participation ratio of 80 percent up to an amount not to exceed $467,448.

The State Local Jobs Today Program loan, through a separate contract, is an amount equivalent to the estimated Federal Surface Transportation Funding applicable to the PART A portion of the PROJECT that is not currently available. Said loan shall be used as advance construction dollars. Contingent upon availability of Federal Funds and Federal approval, Federal Surface Transportation Funds, for future fiscal years, will be applied to any outstanding principal balance of the State Local Jobs Today Program loan for costs incurred on the PART A portion of this PROJECT as advance construction.

<u>PART B</u>
The PART B portion of the PROJECT COST is not eligible for Federal or State participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST or any advance construction expenditure not reimbursed by Federal Funds or State Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required from the REQUESTING PARTY for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 10 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less available Federal Funds, State Local Jobs Today Loan Funds, and State Local Jobs Today Grant Funds as the PROJECT progresses.

Failure to make such payments within 10 days of receipt of billings from the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold without further notice an equal amount from the REQUESTING PARTY'S share of any future Act 51 monthly allocations.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

7. Uppon completion of constgruction of the PROJECT, the REQUESTING PARTY will promptly caust to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

9. The REQUESTING PARTY certifies that it is a person under the Natural Resources and Environmental Protection Act (NREPA); 1995 PA 71 and is not aware of and has no reason to believe that the property on which the work under this agreement is to be performed is a facility as defined in MCL 324.20101(o); MSA 13A.20101(1)(l). The REQUESTING PARTY certifies that it is not a person liable under Part 201 or Part 213 of the Natural Resource and Environmental Protection Act (NREPA); MCL 324.20101 et seq. and Part 213 of NREPA; MCL 324.21301a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will be acquiring property for a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release at or on the property. Pursuant to MCL 324.20126, the REQUESTING PARTY is not a person who is liable for response activity or response activity costs as defined by MCL 324.20101(ee) and (ff).

10. Both the REQUESTING PARTY and the DEPARTMENT certify that the DEPARTMENT is not a person liable under Parts 201 and 213 of the NREPA; that the DEPARTMENT is not an owner or operator of any property within the PROJECT limits; that the DEPARTMENT has not arranged for the disposal of hazardous substances within the PROJECT limits, nor has the DEPARTMENT transported any hazardous substances to the PROJECT limits; that the DEPARTMENT has not conducted any activities which have resulted in a release or threat of release of hazardous substances at the facility or within the PROJECT limits and that the DEPARTMENT is otherwise not liable for any response activities or response activity costs at the facility.

11. If subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require the incurrence of response costs for response activity pursuant to state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall notify the DEPARTMENT, both orally and in writing within 24 hours of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine whether the area within the PROJECT limits constitutes a facility and whether the REQUESTING PARTY is required to incur response costs to address the contamination under state or federal law. If the REQUESTING PARTY is liable for response activities or response costs under state or federal laws, the DEPARTMENT will consult with the FHWA to determine the eligibility of such response costs for reimbursement. In the event that the response costs and other incidental costs including, but not limited to delay costs, are deemed not to be eligible for reimbursement by the FHWA, the REQUESTING PARTY shall be charged for and shall pay to the DEPARTMENT

all response costs and delay costs of the contractor for the PROJECT. If the REQUESTING PARTY refuses to participate in such costs, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

12. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

13. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT and its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT and its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT and its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT and its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402, MSA 3.996(102).

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT and its agents is performing a governmental function, as that term is defined in MCL 691.1401; MSA 3.996(101), which is incidental to the completion of the PROJECT.

14. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402; MSA 3.996(102). Exclusive jurisdiction of such highway for the purposes of MCL 691.1402; MSA 3.996(102) rest with the REQUESTING PARTY and other local agencies having respective jurisdiction.

15. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

16. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current standard specifications for construction, and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owners protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF MUSKEGON

By____________________
Title: Mayor

By Linda Potter
Title: Acting City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By____________________
Department Director MDOT

FORM APPROVED
9/29/06
ASSISTANT ATTORNEY GENERAL

WCS REVIEWED 9-28-06 CONTRACT ADMIN

September 27, 2006

EXHIBIT I

CONTROL SECTION	STUL 61407
JOB NUMBER	84364
PROJECT	STP 0661(025)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	TOTAL
Estimated Cost	$741,600	$8,600	$750,200

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$741,600	$8,600	$750,200
Less State Local Jobs Today Grant Funds*	$116,862	$ 0	$116,862
Balance	$624,738	$8,600	$633,338
Less State Local Jobs Today Program Loan/Federal Funds (Advance Construction) Future Fiscal Year**	$467,448	$ 0	$467,448
REQUESTING PARTY'S SHARE (Future Fiscal Year)	$157,290	$8,600	$165,890

*State Local Jobs Today Grant Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed $116,862.

**Contingent upon availability of Federal Funds and Federal approval, Federal Surface Transportation Funds, for future fiscal years, may be applied to that portion of the PART A cost incurred as advance construction in an amount such that the Federal Surface Transportation Funds equal a participation ratio of 80 percent up to an amount not to exceed $467,448.

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by twenty percent (20%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

   The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

   The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

   If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

   In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

   Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 98-502.

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Transportation
Bureau of Highways Technical Services
425 W. Ottawa, P.O. Box 30050
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _______", or "Final Billing".

4. 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.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. **In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.**

2. **The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.**

3. **The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.**

4. **The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.**

5. **The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.**

6. **The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.**

7. **The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.**

8. **In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.**

9. **The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.**

March, 1998

(Rev. 03/92)

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> **The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).**

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> **The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.**

Commission Meeting Date: October 24, 2006

Date: **October 17, 2006**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department** CBC

RE: **Michigan Main Street/Community Requirements and Expectations Agreement**

SUMMARY OF REQUEST: The Michigan Economic Development Corporation (MEDC) requires that the local community (i.e., City of Muskegon) enter into an agreement with the local Main Street Board and MEDC. The Commission approved the Agreement in 2005. However, the Michigan Main Street has revised the Agreement from three years to five years. They have also made the reporting requirements stricter. Therefore, the Commission is being asked to approve the new Agreement. The Agreement outlines the support to be provided. There is no financial obligation by the City of Muskegon to support the program. The commitments relate to cooperation and support. If, for some reason, the Agreement is not adhered to, the only repercussion is that the Agreement would be null and void.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached Agreement and authorize the City Manager to sign.

COMMITTEE RECOMMENDATION: None.

Michigan Main Street/
Community Requirements and Expectations Agreement

THIS AGREEMENT is entered into and executed by the Michigan Main Street Program, (MMS) whose address is 735 East Michigan Avenue, Lansing, MI 48909, the **City of Muskegon**, County of Muskegon, State of Michigan (the "Community") whose address is 933 Terrace St, and its local Main Street Program (the "Local Main Street Program"), Muskegon Main Street, whose address is 900 Third St, for the purpose of implementing the Michigan Main Street Program in the Community.

WHEREAS, the MMS Program has entered into a contract with the National Trust for Historic Preservation, National Main Street Center, Washington, D.C. (the "NTHP NMSC"), to provide technical expertise, training and services to selected Michigan communities.

WHEREAS, this agreement is for the purpose of setting forth the MMS Program requirements and expectations for the Community's Local Main Street Program, pursuant to its selection as a Michigan Main Street Program Community and pursuant to contractual arrangements between the NTHP NMSC and the MMS Program, so as to assist in the revitalization of the designated Main Street project area of Muskegon, Michigan;

NOW THEREFORE, in consideration of the foregoing mutual covenants and agreements contained herein, the parties have agreed to do as follows:

SECTION I. The Community and its Local Main Street Program agree to:

1. Employ a full-time (no less than forty (40) hours per week) program director for the Local Main Street Program who will be responsible for the day-to-day administration of the Main Street program in the Community, and develop an employment contract to describe the above administrative duties for which the program director is responsible.

2. Complete and accurate monthly reports must be submitted by the 10th of each month on the form provided by the MMS program. If two monthly reports per year are not submitted, this will result in the suspension of all services. Once services are suspended a written warning to the chair of the board and program director will be issued requesting and explanation on why reports have not been submitted. Services will be reinstalled once all reports are up to date.

   Complete and accurate annual performance reports submitted on the 2nd Friday of August each year on the form provided by the MMS program. Annual reports that are not submitted would result in the suspension of all services. If the annual report is not submitted by the 2nd Friday of September, then the MMS/Community

Requirements and Expatiations Agreement will be terminated and the community will no longer be a MMS community.

Annual and monthly reports must still meet these deadlines, regardless of changes in the program at the local level, such as temporary displacement of program director.

3. Funding for the first three years of the program must comply with the budget outlined and approved by MMS. Funding for years four and five should consist of fundraising activities from the MMS program.

4. Use the MMS Program name and logo is trademark protected. MMS communities are welcome to use the name and/or logo with MSHDA pre-approval. The use of the name and logo can be used for marketing material, window signs, flags, letterhead, banners, pins, etc.

5. The program director is required to participate in all scheduled MMS program training sessions (outlined in Section II of this agreement). If two training session are missed within a year by a program director, this will result in the suspension of all services. Once services are suspended a written warning to the chair of the board and program director will be issued requesting and explanation on why training sessions have not been attended. Services will be reinstalled once training issues are resolved. Travel expenses to any required sessions are the sole responsibility of the Local Main Street Program. If a community is with out a program director, then a representative from the community is required to attend in their place.

6. Require its Board, Chair, Committee Chairs and the 4-point approach committee volunteers to actively lead, through work plan and volunteer development and implementation, the Local Main Street Program. Fully utilize and successfully complete all state programmatic activities.

7. Maintain a current membership in the National Main Street Center Network.

10. Assume full responsibility for all costs and expenses associated with the performance of the Local Main Street Program and the performance of its rights and responsibilities under this Agreement. The Community and the Local Main Street Program further acknowledge that MMS is not responsible to the Community and the Local Main Street Program for any costs associated with this Program or the services provided under this Agreement, including but not limited to those costs or expenses incurred as a result of anticipated or actual participation in the MMS Program, the NTHP NMSC Program or pursuant to the Community's selection or participation as a Michigan Main Street Program Community.

SECTION II. The MMS agrees to:

1. Provide five years of customized program training and technical assistance, to each Michigan Main Street community. Training and technical assistance are anticipated as follows, but may be modified by MMS, in its sole discretion, to meet programmatic needs:

RAMPING UP PROGRAM: FIRST THREE YEARS

<u>Year One</u>
Program Orientation (1day in Lansing)
Reconnaissance Team (2 days in community)
Basics 101 Training (1evening in community
Manager Training (1day in Lansing)
Work Plan Development (2 days in community)
Volunteer Training (1day in community)
Design Services for up to three buildings/for five years
Design 101 (1evening in community)
Design Services signs (6 signs for buildings)
Historic District submission assistance to Parks Service (in community)
Market Study including orientation (in Lansing and in community)
Placement of community entranceway MMS signs
Listserv opportunities
Quarterly Forum Trainings (in communities)
State efforts to market and advertise the local main streets
Year End Visit with Memo (1day in community)
National Main Street Conference Registration (one registration per community)

<u>Year Two</u>
Manager Training (1 day in Lansing)
Resource Team Visit (4 days in community)
Design Services for up to three buildings/for five years
Design Services 101(1evening in community)
Listserv opportunities
Quarterly Forum Trainings (in communities)
Year End Evaluation with Final Report (1day in community)
State efforts to market and advertise the local main streets
National Main Street Conference Registration (one registration per community)

<u>Year Three</u>
Manager Training (1 day in Lansing)
Design Services for up to three buildings/for five years
Design Services 101 (1evening in community)
Technical Assistance Visit Workshop (Lansing)
Listserv opportunities
Quarterly Forum Trainings (in communities)
Year End Evaluation with Final Report (1day in community)

State efforts to market and advertise the local main streets
Technical Assistance Visit (in community)
(only accredited communities)
National Main Street Conference Registration (one registration per community)

Year Four
Manager Training (1day in Lansing)
Design Services for up to three buildings/for five years
Quarterly Forum Trainings (in communities)
Year End Evaluation with Final Report (1day in community)
Technical Assistance Visits (in community)
(only accredited communities)
National Main Street Conference Registration (one registration per community)

Year Five
Manager Training (1day in Lansing)
Design Services for up to three buildings/for five years
Quarterly Forum Trainings (in community)
Resource Team Visit (in community)
(only accredited communities)
Year End Evaluation with Final Report (in community)
Technical Assistance Visits (in community)
(only accredited communities)
National Main Street Conference Registration (one registration per community)

2. Conduct quarterly forum trainings statewide for program directors and local Main Street volunteers based on the combined needs of all Michigan Main Street Communities.

3. Conduct a year end evaluation for each community for five years. In order to receive the year end evaluation service the community must be in compliance with the program requirements including training and reporting. Community in the first year of the program will receive a year end memo. Community in years two through five will receive a written report.

4. Provide advice and information to the Local Main Street Program, its staff and board. MMS may, if requested and subject to schedule and program constraints, conduct on-site technical assistance visits by the Main Street Coordinator. Upon request by the Local Main Street Program and subject to agency availability, MMS may also request the assistance of other State or Federal agencies.

5. The design assistance package will include up to three buildings per year for a total of fifteen. The fifteen design assistance packages maybe scheduled according to the community needs and maybe used any time as long as the program is in compliance. If services are desired after year five, then the program must be accredited.

5. **INDEMNIFICATION AND LIABILITY INSURANCE.** To the extent allowed by law, the Community and its Local Main Street Program shall indemnify, defend, and hold harmless MMS or its subsidiaries from any damages that it may sustain through the negligence of the Community and/or its Local Main Street Program pertaining to the performance of this Agreement. The Community and its Local Main Street Program shall maintain such insurance to protect the MMS from claims that might arise out of or as a result of the Community's and/or Local Main Street Program's operations pursuant to this agreement. The Community and/or Local Main Street Program will provide and maintain its own general liability, property damage, and workers compensation insurance, which shall be written for not less than any limits of liability required by law.

6. **TOTAL AGREEMENT.** This Agreement contain the entire agreement between the parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding. This Agreement may not be changed except by mutual agreement of the parties, reduced to writing and signed.

7. **ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by the Agreement, the Community and its Local Main Street Program shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of MMS. Any future successors of the Community and/or Local Main Street Program will be bound by the provisions of this Agreement unless MMS otherwise agrees in a specific written consent.

8. **COMPLIANCE WITH LAWS.** The Community and/or Local Main Street Program is not, and will not during the term of this Agreement, be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits or other governmental authorizations necessary to carry out its duties hereunder.

9 **WAIVER**. A failure or delay in exercising any right with respect to this Agreement will not be presumed to operate as a waiver unless otherwise stated in this Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right, or the exercise of any other right.

10. **NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by electronic mail or by confirmed facsimile; (ii) on the delivery date if delivered personally to the Party to whom the same is directed; (iii) one (1) business day after deposit with a commercial overnight carrier, with written

verification of receipt; or (iv) three (3) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. The notice address for the Parties shall be the address as set forth in this Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by notifying Party. The MMS, the Community and the Local Main Street Program may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.

8. **NON-DISCRIMINATION AND UNFAIR LABOR PRACTICES.** In connection with this Agreement, the Community and its Local Main Street Program shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, gender, height, weight, marital status or handicap. In connection with this Agreement, the Community and its Local Main Street Program shall not violate 1980 Public Act 278, as amended, MCL 423.321, et seq, by entering into a sub-contract with any individual person, firm or entity who has been found in contempt of court by a Federal Court of Appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act. Violations of the law after the beginning date of this Agreement may result in its termination.

9. **SEVERABILITY.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, provided that the principal intent of this Agreement can be preserved.

10. **GOVERNING LAW AND JURISDICTION.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The parties agree that any legal actions concerning this Agreement shall be brought in the Ingham County Circuit Court in Ingham County, Michigan, USA. The terms of this provision shall survive the termination of the cancellation of this agreement.

14. **NO EMPLOYMENT, PARTNERSHIP OR AGENCY RELATIONSHIP.** The MMS Program is limited to furnishing its technical services to the Community and its Local Main Street Program and thus nothing contained herein shall create any employer-employee relationship. Further, this Agreement does not create a partnership relationship.

15. **NO THIRD PARTY BENEFICIARIES.** There are no express or implied third party beneficiaries to this Agreement.

16. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

17. **TERMINATION OR CANCELLATION.**

A. This Agreement may be terminated by MMS by providing written notice of default and termination to the Community and its Local Main Street Program ("Notice of Default and Intent to Terminate") upon the occurrence of any of the following events or conditions ("Event of Default"):

(i) any representation or covenant made by the Community and/or its Local Main Street Program is determined by MMS, in its reasonable judgment, to be incorrect at the time that such representation or covenant was made in any material respect, including, but not limited to, the Reports and compliance with laws as required under this Agreement;

(ii) the Community and/or its Local Main Street Program's failure to comply with any of the covenants of this Agreement;

(iii) use of the program training, technical assistance, and resources provided pursuant to this Agreement for purposes other than as set forth in this Agreement.

B. Notwithstanding the foregoing, the Community and its Local Main Street Program acknowledges that MMS's performance of its obligations under this Agreement is dependent upon the continued approval of funding and/or the continued receipt of state funding. In the event that the State Legislature, the State Government or any State official, public body corporate, commission, authority, body or employees, or the federal government (a) takes any legislative or administrative action, which fails to provide, terminates or reduces the funding or programmatic support necessary for this Agreement, or (b) takes any legislative or administrative action, which is unrelated to the source of funding or programmatic support for this Agreement, but which affects the MMS's ability to fund and administer the MMS Program, then the MMS may cancel this Agreement by providing notice to the Community and its Local Main Street Program of cancellation. Cancellation may be made effective immediately, upon delivery of notice to the Community or its Local Main Street Program, or with such other time period as the MMS, in its sole discretion, deems reasonable.

C. In addition to the above, either party may terminate its obligations under this Agreement without cause by giving the other party a 30-calendar day written notice of such termination.

D. In the event that this Agreement is terminated, neither the MMS nor the Community or its Local Main Street Program shall have any further obligation to perform under this Agreement. The Community and/or the Local Main Street Program shall, unless otherwise directed by the MMS in writing, immediately take all reasonable steps to terminate operations under this Agreement.

18. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The signatories below warrant that they are empowered to enter into this Agreement.

19. **SEVERABILITY.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, provided that the principal intent of this Agreement can be preserved.

20. **Failure to sign and submit this agreement to MMS on or before October 31, 2006, will result in the termination of the community's participation in the MMS program.**

IN WITNESS WHEREOF, the parties have executed this agreement.

"LOCAL MAIN STREET PROGRAM"

BY: Bryon L. Mazade ______________ 10-25-06 ______________
(City Manager or Village President) (Date)

City of Muskegon ______________, Michigan
(City or Village)

BY: ______________ ______________
(Local Main Street Board Chairperson) (Date)

____
(Local Main Street Program)

MICHIGAN MAIN STREET PROGRAM

BY: ______________ ______________
CATeam Director (Date)

BY: ______________ ______________
State Historic Preservation Office (Date)

Commission Meeting Date: October 24, 2006

Date:	**October 16, 2006**
To:	**Honorable Mayor & City Commission**
From:	**Community and Neighborhood Services Department**
RE:	**Lead Based Paint abatement at 1122 Spring St.**

SUMMARY OF REQUEST: To approve the contract with **Success Enterprise,** of 2722 East Broadway Michigan, for the lead base paint abatement of the city-owned home at 1122 Spring for the cost of $24,400. (Twenty-four thousand four hundred dollars)

The City received two (2) additional bids:

- **Specialty Builders**, of 2434 Annette Muskegon Michigan, for $25,650 (Twenty-five thousand six hundred fifty dollars)
- **Statewide Abatement**, of 1720 Creston North Muskegon Michigan, for $27,810 (Twenty-seven thousand eight hundred ten dollars)

After the lead base paint abatement is complete the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer. The structure at 1122 Spring is a part of the Community and Neighborhood Services departments' Operation R & R (Resurgence and Reawakening); which is an attempt to rehabilitate 10 houses throughout the City before the end of this fiscal year.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2006-2007 HOME budget.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve Community and Neighborhood Services office to develop a contract with Success Enterprises of Muskegon Michigan and direct Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: The Operation R & R project was approved by the Land Reutilization Committee.

24-205-236-0003-00 1122 SPRING ST 11/00-STREET VIEW

Commission Meeting Date: October 24, 2006

Date: **October 16, 2006**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Approval of Contractor for Rehabilitation of House at 1122 Spring St.**

SUMMARY OF REQUEST: To approve the contract with **Beattie Bros. Construction LLC**, of 2786 Holton-Whitehall Road Twin Lake Michigan, for the completion of the rehabilitation to be located at 1122 Spring St, for the cost of $43,065 (Forty-three thousand sixty-five dollars).

After the total rehabilitation is completed the home will be sold to a qualified first-time homebuyer, continuing the City's aggressive neighborhood revitalization efforts in the McLaughlin neighborhood area under the Operation: Spring Street Reawakening. Which is under the umbrella of Operation R & R (Resurgence and Reawakening) which is a planned rehabilitation blitz by the Community and Neighborhood Services department to rehabilitate 10 houses throughout the City before May 31, 2006.

The City received three (3) additional bids:

- **Obenauf DePender Construction LLC**, of 4471 Thompkins Trail Muskegon Michigan, for $ 45,195 (Forty-five thousand one hundred ninety-five dollars)
- **Specialty Builders**, of 2434 Annette Ave Muskegon Michigan, for $55,195 (Fifty-five thousand one hundred ninety-five dollars)

- **J2 Development & Construction**, of 109 West Laketon Avenue Muskegon Michigan, for $ 60,894 (Sixty thousand eight hundred ninety-four dollars)

FINANCIAL IMPACT: The funding for the project will be taken from the City's 2006-2007 HOME funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve for the Community and Neighborhood Services office to develop a contract with Beattie Bros. Construction of Twin Lake Michigan and direct the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: Operation R & R was approved by the Land Reutilization Committee.

24-205-236-0003-00 1122 SPRING ST 11/00-STREET VIEW

Commission Meeting Date: October 24, 2006

Date: October 12, 2006

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department CBC

RE: Public Hearing for Amendments to Brownfield Plan- Viridian Place at Edison Landing

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SUMMARY OF REQUEST: To hold a public hearing and approve the attached resolution approving and adopting amendments for the Brownfield Plan. The amendments are for the inclusion of property owned by Edison Landing Lot I, LLC ("ELLI") in the Brownfield Plan.

FINANCIAL IMPACT: There is no direct financial impact in approving the Brownfield Plan amendments, although the redevelopment of the property into a mixed-use development will add to the tax base of the City of Muskegon.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold the public hearing and approve the attached resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for October 24, 2006, at their September 26, 2006 meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions, and it has been published twice In the Muskegon Chronicle. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on September 18, 2006 and further recommends that the Muskegon City Commission approve the Plan amendment.

2006-88(a)

RESOLUTION APPROVING THE BROWNFIELD PLAN AMENDMENT

VIRIDIAN PLACE AT EDISON LANDING

City of Muskegon

County of Muskegon, Michigan

Minutes of a Regular Meeting of the City Commission of the City of Muskegon, County of Muskegon, Michigan (the "City"), held in the City Commission Chambers, on the 24th day of October, 2006, at 5:30 o'clock p.m., prevailing Eastern Time.

PRESENT: Members

Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

ABSENT: Members

Wierengo

The following preamble and resolution were offered by Member Carter and supported by Member Shepherd:

WHEREAS, in accordance with the provisions of Act 381, Public Acts of Michigan, 1996, as amended ("Act 381"), the City of Muskegon Brownfield Redevelopment Authority (the "Authority") has prepared and approved a Brownfield Plan Amendment to add Viridian Place at Edison Landing; and

WHEREAS, the Authority has forwarded the Brownfield Plan Amendment to the City Commission requesting its approval of the Brownfield Plan Amendment; and

WHEREAS, the City Commission has provided notice and a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to express their views and recommendations regarding the Brownfield Plan Amendment, as required by Act 381; and

WHEREAS, not less than 20 days has passed since the City Commission provided notice of the proposed Brownfield Plan to the taxing units; and

WHEREAS, a notice of the Public Hearing on the proposed Brownfield Plan Amendment was published twice in the Muskegon Chronicle, the first of which was not less than 20 days before the scheduled Public Hearing; and

WHEREAS, the City Commission held a public hearing on the proposed Brownfield Plan on October 24, 2006.

NOW, THEREFORE, BE IT RESOLVED, THAT:

1. Definitions. Where used in this Resolution the terms set forth below shall have the following meaning unless the context clearly requires otherwise:

"Eligible Property" means the property designated in the Brownfield Plan as the Eligible Property, as described in Act 381.

"Brownfield Plan" means the Brownfield Plan prepared by the Authority, as transmitted to the City Clerk by the Authority for approval, copies of which Brownfield Plan are on file in the office of the City Clerk.

"Taxing Jurisdiction" shall mean each unit of government levying an ad valorem property tax on the Eligible Property.

2. Public Purpose. The City Commission hereby determines that the Brownfield Plan Amendment constitutes a public purpose.

3. Best Interest of the Public. The City Commission hereby determines that it is in the best interests of the public to promote the revitalization of eligible properties in the City to proceed with the Brownfield Plan Amendment.

4. Review Considerations. As required by Act 381, the City Commission has, in reviewing the Brownfield Plan Amendment, taken into consideration whether the Brownfield Plan Amendment meets the requirements set forth in Section 13 of Act 381.

5. Approval and Adoption of Brownfield Plan Amendment. The Brownfield Plan Amendment as submitted by the Authority is hereby approved and adopted. A copy of the Brownfield Plan and all amendments thereto shall be maintained on file in the City Clerk's office.

6. No Capture of Tax Increment Revenues by Authority. The Authority shall not capture Tax Increment Revenues on the Eligible Property, as described in the Brownfield Plan Amendment.

7. Disclaimer. By adoption of this resolution and approval of the Brownfield Plan Amendment, the City assumes no obligation or liability to the owner, developer or lessor of the Eligible Property for any loss or damage that may result to such persons from the adoption of this resolution and Brownfield Plan Amendment. The City makes no guarantees or representations as to

the determinations of the appropriate state officials regarding the ability of the owner, developer or lessor to qualify for a single business tax credit pursuant to Act 228, Public Acts of Michigan, 1975, as amended, or as to the ability of the Authority to capture tax increment revenues from the State and local school district taxes for the Brownfield Plan.

8. Repealer. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members

Gawron, Shepherd, Spataro, Warmington, Carter, and Davis

NAYS:

Members None

RESOLUTION DECLARED ADOPTED.

Linda S. Potter

Linda S. Potter, Acting City Clerk

Stephen J. Warmington, Mayor

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on October 24, 2006, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Linda S. Potter

Linda S. Potter, Acting City Clerk

Commission Meeting Date: October 24, 2006

Date: **October 16, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Public Hearing - Request to Establish an Obsolete Property District – 67 W. Western Avenue**

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Witt Buick, 67 W. Western Avenue, Muskegon, MI 49442, has requested the establishment of an Obsolete Property District. The district would be located at 67 W. Western Avenue, Muskegon, MI. Total capital investment for this project is $60,000.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval.

COMMITTEE RECOMMENDATION:

None.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2006-88(b)

A resolution establishing an Obsolete Property Rehabilitation District.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

A. The City of Muskegon has been designated as a qualified local government unit for the purpose of establishing Obsolete Property Rehabilitation Districts and approving Applications for Obsolete Property Rehabilitation Exemption Certificates.

B. The area located in the land described in this resolution is known to the City Commission and is clearly characterized by the presence of obsolete commercial property, and the land and improvements are obsolete commercial property.

C. Notice has been given by certified mail to the owners of all real property within the proposed Obsolete Property Rehabilitation District and a hearing has been held offering an opportunity to all owners and any other resident or taxpayer of the City to appear and be heard. Said notice was given at least ten (10) days before the hearing.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. That the property described in this resolution and proposed as an Obsolete Property Rehabilitation District is characterized by obsolete commercial property.

2. That the obsolete commercial property, the subject of this resolution, as is described in Attachment A.

3. That the City Commission hereby establishes an Obsolete Property Rehabilitation District on the lands and parcels set forth in the attached description.

This resolution passed.

Ayes Shepherd, Spataro, Warmington, Carter, Davis, and Gawron

Nays None

CITY OF MUSKEGON

By Linda Potter
Linda Potter, Acting City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on October 24, 2006. 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 Linda Potter

Linda Potter, Acting City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 1 BLK 174 EXC ELY 66 FT LOTS 2 & 3 BLK 174 EXC ALL THAT PT OF BLK 174 DESC AS BEG AT INT OF SLY ROW LN OF WESTERN AVE & WLY ROW LN OF SPRING ST TH S 56D 30M 00S W 74.97 FT ALG SD SLY ROW LN TH N 63D 16M 04S E 61.85 FT TH SELY 22.02 FT ALG A 15 FT R CURVE TO THE RT SD CURVE HAVING A CENTRAL ANGLE OF 84D 05M 14S AND A CHORD WHICH BEARS S 74D 41M 19S E 20.09 FT TO A PT ON SD WLY ROW OF SPRING ST 22.41 FT S 32D 41M 01S E OF THE POB TH N 32D 41M 01S W 22.41 FT ALG SD WLY ROW LN TO POB

Commission Meeting Date: October 16, 2006

Date:	**October 24, 2006**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development** CBC
RE:	**Public Hearing - Request to issue an Obsolete Property Certificate – Witt Buick – 67 W. Western Avenue**

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Witt Buick , 67 W. Western Avenue, Muskegon, MI has requested the issuance of an Obsolete Property Certificate for the property located at 67 W. Western, Muskegon, MI. Total capital investment for this project is $60,000. Because of the amount of investment, the applicant is eligible for an 8 year certificate.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval.

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2006-88(c)

A resolution approving the application for an Obsolete Property Rehabilitation Exemption Certificate by Witt Buick.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

A. The City Commission has received an Application for an Obsolete Property Rehabilitation Exemption Certificate from Witt Buick, to apply to the improvements located in an Obsolete Property Rehabilitation District established by previous resolution.

B. The City of Muskegon is a qualified local governmental unit as determined by STC Bulletin No. 9 of 2000, dated July 12, 2000.

C. An Obsolete Property Rehabilitation District in which the application property is located was established after hearing on October 24, 2006, being the same date that the district was established.

D. The taxable value of the property proposed to be exempt, plus the aggregate taxable value of properties already exempted under PA 146 of 2000 and under PA 198 of 1974, does not exceed five percent (5%) of the total taxable value of the City of Muskegon.

E. In the event it is determined that the said taxable values do exceed five percent (5%), the City Commission determines further that the said excedence will not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of any affected taxing units.

F. This resolution of approval is considered by the City Commission on October 24, 2006, after a public hearing as provided in Section 4(2) of PA 146 of 2000. The hearing was held on this date.

G. The applicant, Witt Buick, is not delinquent any taxes related to the facility.

H. The exemption to be granted by this resolution is for eight (8) years.

I. The City Commission finds that the property for which the Obsolete Property Rehabilitation Exemption Certificate is sought is obsolete property within the meaning of Section 2(h) of Public Act 146 of 2000 in that the property, which is commercial, is functionally obsolete. The City has received from the applicant all the items required by Section 9 of the application form, being the general description of the obsolete facility, a general description of the proposed use, a description of the general nature and extent of the rehabilitation to be undertaken, a descriptive list of fixed building equipment that will be part of the rehabilitated facility, a time schedule for undertaking and complete the rehabilitation, and statement of the economic advantages expected from the exemption.

J. Commencement of the rehabilitation has not occurred before the establishment of the district.

K. The application relates to a rehabilitation program that when completed will constitute a rehabilitated within the meaning of PA 146 of 2000 and will be situated within the Obsolete Property Rehabilitation District established by the City under PA 146 of 2000.

L. Completion of the rehabilitated facility is calculated to and will, at the time of the issuance of the Certificate, have the reasonable likelihood to increase commercial activity and create employment; it will revitalize an urban area. The rehabilitation will include improvements aggregating more than ten percent (10%) of the true cash value of the property at the commencement of the rehabilitation.

M. The City Commission determines that the applicant shall have twelve (12) months to complete the rehabilitation. It shall be completed by October 24, 2007, or one year after the Certificate is issued, whichever occurs later.

N. That notice pursuant to statute has been timely given to the applicant, the assessor for the City of Muskegon, representatives of the affected taxing units and the general public.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. Based upon the statements set forth in, and incorporating the recitals to this resolution, the City Commission hereby approves the application filed by Witt Buick., for an Obsolete Property Rehabilitation Exemption Certificate, to be effective for a period of eight (8) years;

2. BE IT FURTHER RESOLVED, that this resolution of approval relates to the property set forth in Attachment A, the legal description containing the facilities to be improved;

3. BE IT FURTHER RESOLVED, that, as further condition of this approval, the applicant shall comply with the representations and conditions set forth in the recitals above and in the application material submitted to the City.

This resolution passed.

Ayes: Spataro, Warmington, Carter, Davis, Gawron, and Shepherd

Nays: None

CITY OF MUSKEGON

By Linda Potter
Linda Potter, Acting City Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission held on October 24, 2006. 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 Linda Potter
Linda Potter, Acting City Clerk

ECONOMIC ADVANTAGES:
I anticipate that due to the exposure and people realizing that they are looking at Witt Buick, we will have more traffic through our lot. This will allow us the opportunity to show more customers what we have to offer in the way of new or used automobiles and the services we offer. The opportunity to sale more of our products and services will therefore create the need to hire additional personnel. The goal would be to add a minimum of two, a maximum of four people in different areas of customer service.

LEGAL DESCRIPTION OF OBSOLETE PROPERTY:

The property is Witt Buick Inc., located at 64 W. Western Ave., Muskegon, MI. 49442

The legal description per our property tax bills are as follows:

Property owned by Lee A. Witt
Prop #: 61-24-205-174-0002-00
Prop #: 61-24-205-174-0008-00
Prop #: 61-21-205-174-0009-00

Michigan Department of Treasury
3674 (Rev. 6-05)

Application for Obsolete Property Rehabilitation Exemption Certificate

This form is issued as provided by P.A. 146 of 2000. This application should be filed after the district is established. This project will not receive tax benefits until approved by the State Tax Commission. Applications received after October 31 may not be acted upon in the current year. This application is subject to audit by the State Tax Commission.

INSTRUCTIONS: File the original and two copies of this form and the required attachments with the clerk of the local government unit. (The State Tax Commission requires two copies of the Application and attachments. The original is retained by the clerk.) Please see State Tax Commission Bulletin 9 of 2000 for more information about the Obsolete Property Rehabilitation Exemption. The following must be provided to the local government unit as attachments to this application: (a) General description of the obsolete facility (year built, original use, most recent use, number of stories, square footage); (b)General description of the proposed use of the rehabilitated facility, (c) Description of the general nature and extent of the rehabilitation to be undertaken, (d) A descriptive list of the fixed building equipment that will be a part of the rehabilitated facility, (e) A time schedule for undertaking and completing the rehabilitation of the facility, (f) A statement of the economic advantages expected from the exemption.

Applicant (Company) Name (applicant must be the OWNER of the facility) Lee A. Witt		
Company Mailing address (No. and street, P.O. Box, City, State, ZIP code) 67 W Western Ave, Muskegon Mi 49442		
Location of obsolete facility (No. and street, P.O. Box, City, State, ZIP Code) 67 W Western Ave, Muskegon Mi 49442		
City, Township, Village (indicate which) Muskegon	County Muskegon	
Date of Commencement of Rehabilitation 10-3-2006	Planned date of Completion of Rehabilitation 7-1-2007	School District where facility is located (include school code) Muskegon Schools 61010
Estimated Cost of Rehabilitation $60,000.00 minimum	Number of years exemption requested	Attach Legal description of Obsolete Property on separate sheet:

Expected project likelihood (check all that apply):

- [ ] Increase Commercial activity
- [ ] Retain employment
- [ ] Revitalize urban areas
- [ ] Create employment
- [ ] Prevent a loss of employment
- [ ] Increase number of residents in the community in which the facility is situated

Indicate the number of jobs to be retained or created as a result of rehabilitating the facility, including expected construction employment _____

Each year, the State Treasurer may approve 25 additional reductions of half the school operating and state education taxes for a period not to exceed six years. Check the following box if you wish to be considered for this exclusion. [ ]

APPLICANT'S CERTIFICATION

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all of the information is truly descriptive of the property for which this application is being submitted. Further, the undersigned is aware that, if any statement or information provided is untrue, the exemption provided by P.A. 146 of 2000 may be in jeopardy.

The applicant certifies that this application relates to a rehabilitation program that, when completed, constitutes a rehabilitated facility, as defined by P.A. 146 of 2000 and that the rehabilitation of the facility would not be undertaken without the applicant's receipt of the exemption certificate.

It is further certified that the undersigned is familiar with the provisions of P.A. 146 of 2000, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Obsolete Property Rehabilitation Exemption Certificate by the State Tax Commission.

Name of Company Officer (no authorized agents) Witt Buick Inc	Telephone Number 231-722-3771	Fax Number 231-728-3600
Mailing Address 67 W. Western Ave, Muskegon, Mi 49442		Email Address jwitt@wittbuick.com
Signature Jan Witt		Title V. Pres

LOCAL GOVERNMENT UNIT CLERK CERTIFICATION

Clerk must also complete Parts 1, 2 and 4 on Page 2. Part 3 to be completed by the assessor.

Signature	Date application received

FOR STATE TAX COMMISSION USE

Application Number	Date Received

LOCAL GOVERNMENT ACTION

This section is to be completed by the clerk of the local governing unit before submitting the application to the State Tax Commission. Include a copy of the resolution which approves the application. All sections must be completed in order to process.

PART 1: ACTION TAKEN

Action Date:______________________________

☐ Exemption Approved for _________ Years, ending December 30, _________ (not to exceed 12 years)

☐ Denied

PART 2: RESOLUTIONS (the following statements must be included in resolutions approving)

A statement that the local unit is a Qualified Local Governmental Unit.

A statement that the Obsolete Property Rehabilitation District was legally established including the date established and the date of hearing as provided by section 3 of P.A. 146 of 2000.

A statement indicating whether the taxable value of the property proposed to be exempt plus the aggregate taxable value of property already exempt under P.A. 146 of 2000 and under P.A. 198 of 1974 (IFT's) exceeds 5% of the total taxable value of the unit.

A statement of the factors, criteria and objectives, if any, necessary for extending the exemption, when the certificate is for less than 12 years.

A statement that the application was approved at a public hearing as provided by section 4(2) of P.A. 146 of 2000 including the date of the hearing.

A statement that the applicant is not delinquent in any taxes related to the facility.

If it exceeds 5% (see above), a statement that exceeding 5% will not have the effect of substantially impeding the operation of the Qualified Local Governmental Unit or of impairing the financial soundness of an affected taxing unit.

A statement that all of the items described on line 9 under "Instructions" (a) through (f) of the Application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the Qualified Local Governmental Unit by the applicant.

A statement that the application is for obsolete property as defined in section 2(h) of Public Act 146 of 2000.

A statement that the commencement of the rehabilitation of the facility did not occur before the establishment of the Obsolete Property Rehabilitation District.

A statement that the application relates to a rehabilitation program that when completed constitutes a rehabilitated facility within the meaning of P.A. 146 of 2000 and that is situated within an Obsolete Property Rehabilitation District established in a Qualified Local Governmental Unit eligible under P.A. 146 of 2000 to establish such a district.

A statement that completion of the rehabilitated facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to, increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility is situated. The statement should indicate which of these the rehabilitation is likely to result in.

A statement that the rehabilitation includes improvements aggregating 10% or more of the true cash value of the property at commencement of the rehabilitation as provided by section 2(l) of P.A. 146 of 2000.

A statement of the period of time authorized by the Qualified Local Governmental Unit for completion of the rehabilitation.

PART 3: ASSESSOR RECOMMENDATIONS

Current Taxable Value and State Equalized Value of obsolete properties

	Taxable Value	State Equalized Value (SEV)
Land		
Buildings		
Buildings on Leased Land		
Other Personal Property		
Prior Year Values		

Name of Local Government Body	Date of Action on application

PART 4: CLERK CERTIFICATION

The undersigned clerk certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way. Further, the undersigned is aware that if any information provided is untrue, the exemption provided by P.A. 146 of 2000 may be in jeopardy.

Name of Clerk	Clerk Signature		Date	
Clerk's Mailing Address	City		State	ZIP Code
	Telephone Number	Fax Number	Email Address	

Mail completed application and attachments to: State Tax Commission
Michigan Department of Treasury
P.O. Box 30471
Lansing, Michigan 48909-7971

If you have any questions, call (517) 373-3272.

APPLICATION FOR OBSOLETE PROPERTY REHABILITATION EXEMPTION CERTIFICATE

APPLICANT: WITT BUICK INC.
LOCATION: 67 W WESTERN AVE., MUSKEGON, MI 49442
PHONE: 231-722-3771

DESCRIPTION OF OBSOLETE PROPERTY:
The original building was constructed about 1912 by the Witt family as an automobile sales and repair facility. The facility is still being used as a franchised automobile facility by the Witt family. The facility has been improved upon over the years. The most recent improvement was to add on a customer waiting area, completed in 1995. The building is mostly one story with a couple areas having 2 stories. The square footage of this facility is 23,914.

PROPOSED USE OF THE REHABILITATED FACILITY:
The facility will remain as a franchised automobile facility to sale and service automobiles.

DESIRED REHABILITATION TO BE DONE:
During the process of changing the Western Avenue and Spring Street road bed, the sidewalk and access to the Western Avenue entrance no longer exists. The construction of Shoreline Drive, soon to become Business 31, has changed the focus of our signage.
The area of initial rehabilitation will be to landscape an area for access to our Western Avenue entrance and to allow for a display of vehicles. This will include adding sidewalk, display pad and landscaping.
The fact that all signage was focused on Clay Avenue because Western Avenue was not a well traveled road, we will need to change the signage. We need to let people driving on Shoreline Drive know what we are. Many Muskegon people have no idea where Witt Buick is located. The signage needs to be relocated for Shoreline Drive and Western Avenue visibility.
With the exposure we will gain from Shoreline Drive traffic, I will need to plan for additional hoists for repair of automoblies.

FIXED EQUIPMENT:
The following will be added permanently to our facility.
1 – Sidewalk to Western Avenue entrance.
2 – Display pad for automobiles.
3 – Removal of some on the signage and adding additional signage to take advantage of the Shoreline Drive exposure. This will include removal of current awnings and adding awnings that more closely achieve the image GM is now requesting from dealers.
4 – The addition of two or possibly 4 hoists.
5 – The possible addition of a restroom that will be handicap assessable.
6 - The addition of energy efficient cooling/heat pump/furnace for the main show room and office area.

TIME SCHEDULE FOR COMPLETION:
I plan to begin as quickly as possible. Due to inclement weather, the completion will be in the spring/summer of 2007.

AGENDA ITEM NO.____________

CITY COMMISSION MEETING____________

TO: **HONORABLE MAYOR AND CITY COMMISSIONERS**

FROM: **Kenneth D. Grant, Income Tax Administrator**

DATE: **October 5, 2006**

RE: **Donation program for 2006 Individual Income Tax Returns**

SUMMARY OF REQUEST:
Approval to designate donations from the 2006 income tax returns towards the upkeep of the Dog Park or the Muskegon's Smith Ryerson Recreational Center. Income tax refunds voluntarily donated from taxpayers will go to either the Dog Park or the Recreational Center.

FINANCIAL IMPACT:
The average amount collected each year is $2,000.00.

BUDGET ACTION REQUIRED:
None

STAFF RECOMMENDATION:
Approval recommended

COMMITTTEE RECOMMENDATION:

Muskegon Recreational Center
550 Wood St.
Muskegon, MI 49442
Phone: 231/ 744 0071

October 11, 2006

City of Muskegon Commission
933 Terrace St.
Muskegon, MI 49443

Dear Commission,

Enclosed is some information about Muskegon Recreational Center (MRC) regarding our request to be placed on the City income tax return for donation consideration. MRC is a non-profit corporation registered with the State of Michigan. Our 501 C 3 designation from the IRS is expected in early 2007. MRC has a contract with the City of Muskegon to manage the city owned Smith Ryerson Community Center. MRC offers athletic, recreational and educational programming. Our contract to manage Smith Ryerson was effective 10/4/06. The Smith Ryerson building has been in long need of a face lift and MRC has taken on that responsibility. In summer 2006, exterior painting and maintenance was completed. The interior will be completed in October 2006. These improvements include painting of the banquet room, removing years of dirt build up on all floors, re-waxing, and the replacement of ceiling tiles and window coverings. We have a Spring 2007 goal of landscaping the entire perimeter of the building including bringing in top soil, adding irrigation, complete sodding and providing new planting of flowers, bushes and shrubs. Specific to our programming, we have purchased equipment and offer a top notch boxing training facility. Our Educational Resource Room will be completed in Nov. 2006 and the internet is provided to our participants. Approximately $1,500.00 is being spent on completion of the Educational Resource Room. MRC needs to purchase a variety of games for the game room including an air hockey table valued at approximately $1,800.00. MRC has twenty currently enrolled participants in the boxing program. We anticipate 25 participants per night once the game room and ER room are completed. Our target age is youth and young persons 14-24 years of age.

MRC will be initiating its New Experience Program in spring/summer 2007. We will be taking our participants on field trips and our focus will be activities that they have never experienced. This program will be costly based on our level of participation and the types of activities involved that include charter boat fishing, golfing, horseback riding and others. MRC has entered into a agreement with Webster House Outreach who will pay MRC rent for the building and offer their program in the Smith Ryerson center. Webster House started moving items in October 2006 and will officially be a tenant on December 1, 2006.

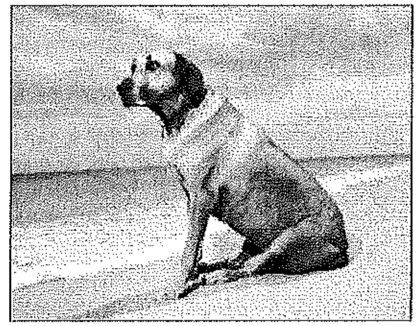
Our motto at MRC is "helping youth become successful citizens" and hopefully you will find our organization one worthy of being placed on the 2006 City income tax return. I can be reached at the Muskegon Police Department at phone 724 6762 with questions.

Sincerely,

Matt Kolkema
President, MRC

cc: Ken Grant – Income Tax Director

October 16, 2006



Mayor and City Commissioners;

Re: Dog Beach Request

During this past summer the numerous articles and commission appearances of visitors and citizens it became very apparent that the City of Muskegon's Dog Beach located at Kruse Park has become a major tourist attraction and destination point. The controversy that resulted put into motion an education program by our summer Park Rangers. It was found that many dog park users did not know they were required to pick up after their animals nor did they know that a fine could be given. In addition more excrement removal devices (doggy mittens) were used than in previous years. The City parks crew dispensed over $600 worth of doggy mittens in 2006. Because of expected additional usage we estimate that our future needs will be about $1000 per year.

As a result of customer comments we need to revise our current signage to make it clearer to park users what is expected of them. It is our intention to revise the existing signage and not to add additional signage if at all possible.

It is also desired to publish a pamphlet for animals within our park system, the rules and regulations as set forth in our ordinance. This pamphlet could be distributed at the Animal Shelter when people come to register their animals as well as at the Dog Beach. We are also hopeful that citizens who enjoy these facilities will consider giving a donation to their upkeep.

The City of Muskegon Parks Department is offering the suggestion that the City Commission consider designating the Kruse Park Dog Beach as the recipient of any donated refunds in the upcoming taxable year.

Thank You;

Robert Kuhn PE

Director of Public Works (and Parks)

Commission Meeting Date: October 24, 2006

Date: **October 16, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Request to construct improvements in Rights of way and Maintenance Agreement with Witt Buick**

SUMMARY OF REQUEST:

Witt Buick, 67 W. Western Avenue, Muskegon, MI 49442, has requested to be allowed to construct certain improvements on the City rights-of-way at the locations on the attached map.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the attached maintenance agreement, allowing Witt Buick to construct improvements on the City rights of way.

COMMITTEE RECOMMENDATION:

None.

Maintenance Agreement

This Agreement is made October 24, 2006 ("Effective Date"), by and between the **City of Muskegon** ("City"), of 933 Terrace Street, Muskegon, Michigan 49440, and Witt Buick ("Company") of 67 W. Western, Muskegon, Michigan, 49442.

Background

A. "City" is the owner of the rights of way located near 67 W. Western as illustrated on the attached map. ("Property").

B. The parties wish to enter into an agreement regarding the installation and maintenance of certain improvements located at the Property.

C. Company has agreed to perform the installation and physical maintenance of the garden at the Property pursuant to the terms set forth in this maintenance agreement.

Therefore, the parties agree as follows:

1. **General Agreement.** Company agrees, at the sole cost of the Company, to perform the installation and physical maintenance of the Property.

2. **Site Design.** Company shall submit a design for the Property, and receive approval from the City, prior to installation. City agrees not to unreasonably withhold its approval of the design. Any necessary permits or variances (fencing, lighting, electrical, plumbing, etc.) are the responsibility of the Company and not the City and must be obtained prior to performing any work.

3. **Maintenance.** Company shall be responsible for the physical installation and continuing maintenance of the Property, including i) mowing, trimming, weed control and any other routine maintenance of the grass, trees, shrubs and plantings at the Property, and ii) trash and litter removal from the Property.

4. **Utilities/Removal of Improvements.** Company is aware that various utilities are located in the areas where improvements are proposed. Company is aware that removal of improvements may be necessary to access utilities for maintenance and repair. City shall not be liable for any damages to the improvements resulting from removal of improvements for utility repair/ maintenance.

5. **Term.** This maintenance agreement shall continue in effect until terminated by either party. Upon termination, Company waives any claim against City for installation or maintenance of any item on the Property.

6. **Insurance.** Should the Company place any items that are to remain on the property for an extended period of time, the Company must purchase liability insurance and provide proof of the insurance to the City.

7. **Hold Harmless.** Company shall indemnify, defend and save City harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property arising from any occurrence in or about the Property or from the occupancy or use by Company of the Property or any part thereof or resulting in whole or part from any act or omission of Company, its employees, invitees, licensees, contractors or agents. City shall not be liable for any injury to the person or property of Company or any other persons on the Property resulting from the criminal or negligent acts of third persons occurring on or nearby the Property.

[Signatures appear on following page]

City of Muskegon, a municipal corporation

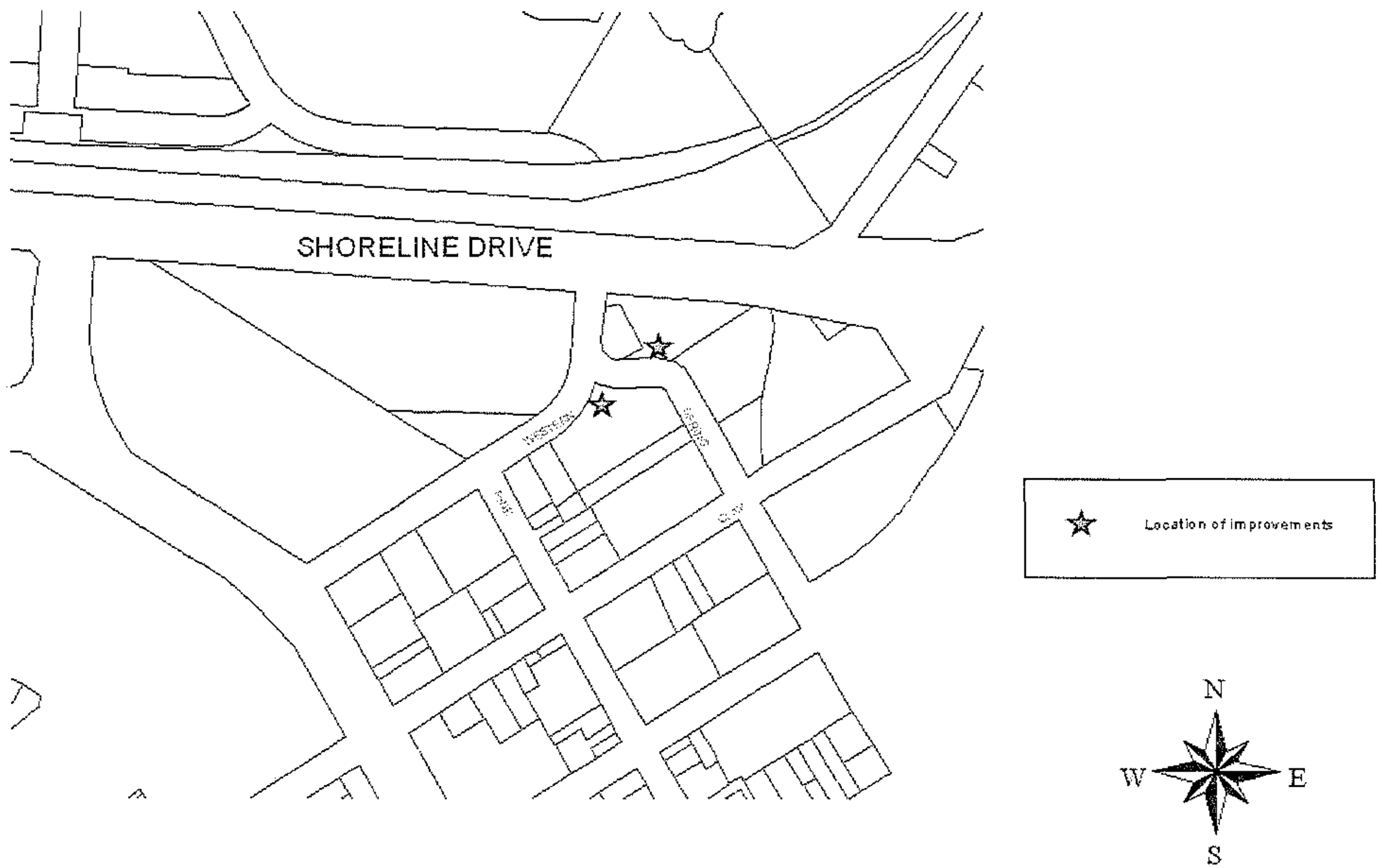
By:
Name: Stephen J. Warmington
Title: Mayor
Date: October 24, 2006

By Linda Potter
Name: Linda Potter,
Title: Acting City Clerk
Date: October 25, 2006

Company

Witt Buick Inc
Name: Jan Witt
Date: 10-26-2006

Proposed improvement sites - Witt Buick



AGENDA ITEM NO. ________________

CITY COMMISSION MEETING ______________________

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: October 16, 2006

RE: Harbour Towne Dockominium

SUMMARY OF REQUEST:
To approve an agreement with Harbour Towne Commercial Development and Harbour Towne Marina Association to complete a development component of the Harbour Towne Condominium project.

FINANCIAL IMPACT:
$3,000.

BUDGET ACTION REQUIRED:
None.

STAFF RECOMMENDATION:
To approve the attached agreement.

COMMITTEE RECOMMENDATION:
None.

PARMENTER O'TOOLE

Attorneys at Law

John M. Briggs, III
Michael L. Rolf
George W. Johnson
W. Brad Groom
Eric R. Gielow
John C. Schrier
Christopher L. Kelly
Linda S. Kaare
James R. Scheuerle
William J. Meier
Keith L. McEvoy
Anna Urick Duggins
Scott M. Knowlton

601 Terrace Street • P.O. Box 786 • Muskegon, Michigan 49443-0786
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Thomas H. Thornhill

Scott R. Sewick
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Nancy Ann Hornacek
Adam G. Zuwerink
Douglas J. Winkle

Of Counsel
Thomas J. O'Toole
Eric J. Fauri
Michael M. Knowlton

George A. Parmenter, 1903-1993

RECEIVED
OCT 10 2006
MUSKEGON
CITY MANAGER'S OFFICE

October 10, 2006

Bryon Mazade
City Manager
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440

Re: Harbour Towne Dockominium

Dear Mr. Mazade:

Enclosed please find a proposed Agreement between the City of Muskegon, Harbour Towne Commercial Development, Inc., and Harbour Towne Marina Association.

Pursuant to several 1994 agreements between the above-referenced parties, Harbour Towne Commercial Development, Inc. had an obligation to construct a parking lot and a bathhouse. Until the parking lot and bathhouse were constructed, Transamerica Title n/k/a LandAmerica Transnation Title was to escrow $500 from the sale of each dock in order to assure completion. Both were constructed, but not to the specifications included in the Agreements.

Subject to City Commission approval, the parties have agreed as follows:

1) The parties agree that the constructed parking lot and bathhouse are acceptable; and

2) The $6,000 held by LandAmerica shall be split evenly between the City of Muskegon and Harbour Towne Marina Association.

If the City Commission approves the attached Agreement and Discharge of Mortgage, please do the following:

1) Three original Agreements should be executed and returned to me for circulation; and

2) One Discharge of Mortgage should be executed and returned to me. Upon receipt of a fully executed Agreement, I will then record the Discharge of Mortgage.

If you have any questions, please feel free to contact me.

Very truly yours,

John C Schrier/j

John C. Schrier
Phone: (231) 722-5401
Fax: (231) 728-2206
E-mail: jcs@parmenterlaw.com

Enclosure

AGREEMENT

This Agreement is effective on October 24, 2006, between the **City of Muskegon**, a Michigan municipal corporation (the "City"), **Harbour Towne Commercial Development, Inc.**, a Michigan corporation ("Developer"), and the **Harbour Towne Marina Association, Inc.**, a Michigan non-profit corporation ("Association").

Background

A. The City, the Developer and Association entered into a number of agreements relating to the purchase of 49 dockominiums located at Harbour Towne Marina Condominiums ("Property"), dated June 24, 1994.

B. Pursuant to paragraph 4.2 of an Agreement between Developer and City, the Developer was to escrow $500 from each dockominium closing with Transamerica Title n/k/a LandAmerica Transnation Title ("LandAmerica") to secure the completion of a parking lot and bathhouse on an easement located on the Association property and to be used by Association members.

C. The parking lot and bathhouse have been built by Developer, but were not built to specifications agreed to by the City pursuant to paragraph 4.2 of the Agreement. The City desires to waive the specification requirement for the parking lot and bathhouse pursuant to the terms of this Agreement.

D. LandAmerica is holding $6,000 in escrow ("Escrowed Funds"), and the parties desire to enter into this Agreement to provide for the disbursement of the escrowed funds.

Therefore, the parties agree as follows:

1. **Waiver of City Approval; Discharge of Mortgage.** The Developer agrees to release the Escrowed Funds to the City and the Association in accordance with this Agreement, in exchange for which the City and Association agree to waive their rights to approve construction of the parking lot and bathhouse under paragraph 4.2 of the Purchase Agreement. City shall execute the discharge of mortgage attached as **Exhibit A**.

2. **Return of Earnest Money.** Upon execution of this Agreement, the parties agree that the earnest money paid by the Developer to LandAmerica in connection with the Purchase Agreement shall be distributed by LandAmerica in equal amounts to the City and the Association.

3. **Mutual Release of Claims.** Effective upon the execution of this Agreement, the City Developer and Association hereby fully and unconditionally release and discharge each other from any and all obligations relating to the construction of the parking lot and bathhouse under the Agreements executed on or about June 24, 1994.

The parties have executed this Agreement on the date written below their name, to be effective as of the date first written above.

Harbour Towne Commercial Development, Inc.

By: __________________________
Name: Richard B. Anderson
Title: President
Date: __________________

City of Muskegon

By: [signature]
Name: Stephen J. Warmington
Title: Mayor
Date: 11-6-06

Harbour Towne Marina Association, Inc.

By: __________________________
Name: Bernard deWit
Title: President
Date: __________________

Attest:

Linda S. Potter
Name: Linda S. Potter
Title: Acting City Clerk
Date: 11-8-06

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Exhibit A
Discharge of Mortgage

DISCHARGE OF MORTGAGE

THE MORTGAGE between **Harbour Towne Commercial Development, Inc.**, as mortgagor, and the **City of Muskegon**, as mortgagee, recorded on August 24, 1994 in Liber 1789, Pages 783-785, Muskegon County Records is fully discharged.

This instrument is dated this ______ day of October, 2006.

CITY OF MUSKEGON

By: ____________________
Stephen J. Warmington, Mayor

And: Linda Potter
Linda Potter, Acting Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 9th day of November, 2006, by STEPHEN J. WARMINGTON and LINDA POTTER, the Mayor and Acting Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

JoAnn M. Krukowski
JoAnn M Krukowski, Notary Public
Acting in the County of Muskegon, Michigan
Muskegon County, Michigan
My Comm. Expires: 05-13-2012

Prepared By & Upon Recording Return To:
John C. Schrier
Parmenter O'Toole
601 Terrace Street, P.O. Box 786
Muskegon, MI 49443-0786

John M. Briggs, III
Michael L. Rolf
George W. Johnson
W. Brad Groom
Eric R. Gielow
John C. Schrier
Christopher L. Kelly
Linda S. Kaare
James R. Scheuerle
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PARMENTER O'TOOLE

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Of Counsel
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Eric J. Fauri
Michael M. Knowlton

George A. Parmenter, 1903-1993

June 13, 2007

Ann Marie Becker
Clerk
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440

Re: Harbour Towne Commercial Development and Harbour Towne Marina Association

Dear Ms. Becker:

Enclosed please find a fully executed Agreement, which terminates any obligations under a previous agreement involving the above referenced parties and the City of Muskegon.

Very truly yours,

John C. Schrier
Phone: (231) 722-5401
Fax: (231) 728-2206
E-mail: jcs@parmenterlaw.com

Enclosure

C: Bryon Mazade

G:\EDSI\FILES\00100\087201\LTR\DK4354.DOC

AGREEMENT

This Agreement is effective on October 24, 2006, between the **City of Muskegon**, a Michigan municipal corporation (the "City"), **Harbour Towne Commercial Development, Inc.**, a Michigan corporation ("Developer"), and the **Harbour Towne Marina Association, Inc.**, a Michigan non-profit corporation ("Association").

Background

A. The City, the Developer and Association entered into a number of agreements relating to the purchase of 49 dockominiums located at Harbour Towne Marina Condominiums ("Property"), dated June 24, 1994.

B. Pursuant to paragraph 4.2 of an Agreement between Developer and City, the Developer was to escrow $500 from each dockominium closing with Transamerica Title n/k/a LandAmerica Transnation Title ("LandAmerica") to secure the completion of a parking lot and bathhouse on an easement located on the Association property and to be used by Association members.

C. The parking lot and bathhouse have been built by Developer, but were not built to specifications agreed to by the City pursuant to paragraph 4.2 of the Agreement. The City desires to waive the specification requirement for the parking lot and bathhouse pursuant to the terms of this Agreement.

D. LandAmerica is holding $6,000 in escrow ("Escrowed Funds"), and the parties desire to enter into this Agreement to provide for the disbursement of the escrowed funds.

Therefore, the parties agree as follows:

1. **Waiver of City Approval; Discharge of Mortgage.** The Developer agrees to release the Escrowed Funds to the City and the Association in accordance with this Agreement, in exchange for which the City and Association agree to waive their rights to approve construction of the parking lot and bathhouse under paragraph 4.2 of the Purchase Agreement. City shall execute the discharge of mortgage attached as **Exhibit A**.

2. **Return of Earnest Money.** Upon execution of this Agreement, the parties agree that the earnest money paid by the Developer to LandAmerica in connection with the Purchase Agreement shall be distributed by LandAmerica in equal amounts to the City and the Association.

3. **Mutual Release of Claims.** Effective upon the execution of this Agreement, the City Developer and Association hereby fully and unconditionally release and discharge each other from any and all obligations relating to the construction of the parking lot and bathhouse under the Agreements executed on or about June 24, 1994.

The parties have executed this Agreement on the date written below their name, to be effective as of the date first written above.

Harbour Towne Commercial Development, Inc.

By: ____________________
Name: Richard B. Anderson
Title: President
Date: ____________________

City of Muskegon

By: ____________________
Name: Stephen J. Warmington
Title: Mayor
Date: 11-6-06

Harbour Towne Marina Association, Inc.

By: Bernard M deWit
Name: Bernard deWit
Title: President
Date: 5/31/07

Attest:

Linda S. Potter
Name: Linda S. Potter
Title: Acting City Clerk
Date: 11-8-06

Exhibit A
Discharge of Mortgage

CHARRON & HANISCH, P.L.C.
ATTORNEYS AT LAW

4949 Plainfield, N.E.
Grand Rapids, Michigan 49525
Telephone: (616) 363-0300
Fax: (616) 363-0339

DAVID W. CHARRON
MARK C. HANISCH
WILLIAM K. VAN'T HOF
GARY G. LOVE
JOHN F. EARDLEY
EUGENIE B. EARDLEY
STACEY A. GEORGE
HEIDI L. HOHENDORF

June 11, 2007

Mr. John C. Shrier
Parmenter O'Toole
601 Terrace Street
P.O. Box 786
Muskegon, Michigan 49443

Re: Harbour Towne

Dear John:

I am pleased to inform you that we were finally able to get all of the signatures on the Agreement between the City of Muskegon, Harbour Towne Commercial Development, Inc., and Harbour Towne Marina Association, Inc. Enclosed is an original copy for your records. I am also sending a copy to LandAmercia/Transnation so that they may disburse the escrowed funds accordingly, with $3,000 to the City and $3,000 to the Association. Upon receipt of such funds, please execute the discharge of mortgage.

If you have any questions, please feel free to contact me. We appreciate all of your help in this matter.

Best regards.

Sincerely,

CHARRON & HANISCH, P.L.C.

Heidi Hohendorf

Heidi L. Hohendorf

HLH/asv
Enclosure

CHARRON & HANISCH, P.L.C.
ATTORNEYS AT LAW

4949 Plainfield, N.E.
Grand Rapids, Michigan 49525
Telephone: (616) 363-0300
Fax: (616) 363-0339

DAVID W. CHARRON
MARK C. HANISCH
WILLIAM K. VAN'T HOF
GARY G. LOVE
JOHN F. EARDLEY
EUGENIE B. EARDLEY
STACEY A. GEORGE
HEIDI L. HOHENDORF

June 11, 2007

LandAmerica/Transnation Title Co
ATTN: Char
570 Seminole Rd.
Muskegon, MI 49441

Re: Harbour Towne Marina Association escrowed funds

Dear Char:

Pursuant to an Agreement executed by Harbour Towne Commercial Development, Inc., the City of Muskegon and Harbour Towne Marina Association, Inc., in 1994, Harbour Towne Commercial Development, Inc., was to escrow $500 from each dockominium closing in Harbour Towne with Transnation to secure the completion of a parking lot and bathhouse on the Association's property. Transnation is currently holding $6,000 in escrow.

Enclosed is another Agreement recently executed by all of the above parties which provides that the $6,000 being held in escrow be released with $3,000 going to the City of Muskegon and the remaining $3,000 to the Harbour Towne Marina Association, Inc. Accordingly, we ask that you please release the escrowed funds in the appropriate manner.

If you have any questions, please feel free to contact me. We appreciate all of your help in this matter.

Best regards.

Sincerely,

CHARRON & HANISCH, P.L.C.

Heidi Hohendorf

Heidi L. Hohendorf

HLHasv
Enclosure
cc: Mr. David C. Jaunese
Mr. John C. Shrier ✓

DATE: October 16, 2006

TO: Honorable Mayor and Commissioners

FROM: Mark Kincaid, Deputy Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-050097

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **856 Fork – AREA 11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-050097– 856 Fork

Location and ownership: This structure is located on Fork between Amity and Allen and is owned by Tammie Robinson.

Staff Correspondence: A fire interior inspection was conducted 04/13/04. A dangerous building inspection was conducted on 03/28/05. The Notice and Order to Repair was issued on 04/15/05. A building permit was issued 04/22/04 was extended 06/13/05 and expired 11/03/05. Electrical permit issued 06/07/04, expired 0908/05 with a rough-in approved but no final inspection scheduled. On 08/04/05 the HBA declared the structure substandard and dangerous and a public nuisance. A progress inspection was conducted 09/08/05. A letter was sent 11/18/05 requesting owner to complete repairs and schedule inspection by December 15, 2005. Case was put on Commission agenda January 24,2006 but was removed, permits were issued and electrical & plumbing have been finaled, but the building permit remains outstanding. Letters have been sent 06/08//06 and 08/25/06 requesting final inspections with no response from owner.

Owner Contact: No one was present to represent case at the HBA meeting. The contractor, related to the owner, did ask for an extension which was granted but no final building inspections have been scheduled and no owner contact.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: $13,400

Estimated cost to repair: $5,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON
DANGEROUS BUILDING INSPECTION REPORT

Friday, January 13, 2006

Enforcement # EN050097 **Property Address** 856 FORK ST
Parcel #24-205-204-0008-00 **Owner** ROBINSON TAMMIE

Inspector: Henry Faltinowski

Date completed: 03/28/2005

DEFICENCIES:

Uncorrected

1. All permits, building, electrical and plumbing have expired. No inspections have been performed.
2. Exterior of home deteriorating more as no work has started.
3. Interior inspection requested by trade inspectors to verify progress.

Progress Inspection Conducted 09/08/05

1. Still needs exterior repairs completed - roof, fascia, & soffitt.
2. In process of drywall.
3. Needs floor repair - joist repair.
4. Needs cabinets, finish flooring.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector Date

INSPECTION SUMMARY

FOR: 856 Fork

This is a two-story wood frame dwelling. Renovations are about 80% complete. Work on project appears to have stopped. Letter has been sent to homeowner requesting the project be completed and final inspection be scheduled with no response from owner.

856 Fork.

3/28/2005.

DATE: October 16, 2006

TO: Honorable Mayor and Commissioners

FROM: Mark Kincaid, Deputy Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-060011

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1957 Continental** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-060011 – 1957 Continental

Location and ownership: This structure is located on Continental between Holbrook and Keating and is owned by Bankers Trust Co of CA, 400 Countrywide Way, Simi Valley, CA 93065-6298.

Staff Correspondence: A dangerous building inspection was conducted on 02/28/06. The Notice and Order to Repair was issued on 03/02/06. On 04/06/06 the HBA declared the structure substandard and dangerous.

Owner Contact: No one was present to represent property at the HBA meeting dated 04/06/06. Home was in foreclosure. Several people have shown interest in purchasing property but there have been no permits issued and no contact from bank.

Financial Impact: General Funds

Budget action required: None

State Equalized value: $16,600

Estimated cost to repair: $5,000 Exterior Only

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

INSPECTION SUMMARY

FOR: 1957 Continental

This is a one story wood frame building with attached garage. The garage has the most structural damage, the roof system on home has sagging rafters. Home could be repaired but at this time there has been no contact from the property owner.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Wednesday, March 1, 2006

Enforcement # EN060011 **Property Address** 1957 CONTINENTAL ST
Parcel #24-215-007-0022-00 **Owner** BANKERS TRUST CO OF CA

Inspector: Henry Faltinowski

Date completed: 02/28/06

DEFICENCIES:

Uncorrected

1. **Siding - replace repair.**
2. **Back garage rotted sheathing, exposed OSB, holes in siding, rotted soffit, fascia.**
3. **Tuck point foundation wall block.**
4. **Repair damaged section of roof north side of home large sag - repair.**

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector Date

1957 Continental

DATE: October 16, 2006

TO: Honorable Mayor and Commissioners

FROM: Mark Kincaid, Deputy Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-030115

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **775 Washington – Area 12** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-030115 – 775 Washington

Location and ownership: This structure is located on Washington between Henry St. and Beidler and is owned by Maria Morales/Francisco Galindo, 1873 W. Whitehall Rd., N. Muskegon, MI 49445.

Staff Correspondence: A dangerous building inspection was conducted on 05/18/04. The Notice and Order to Repair was issued on 05/20/04. On 07/01/04 the HBA tabled case to allow owner time to schedule interior inspection and provide timeline for repairs. A interior inspection was conducted 07/14/04. A building permit was issued 08/17/04 with expiration of 10/18/04. Case came back before HBA 03/05/05 and was tabled, property had been sold on land contract, an interior inspection was conducted 03/17/05 and a new building permit was issued 04/04/05. A timeline was agreed upon with the exterior to be completed July 2005 and all repairs completed by March 31, 2006. The case was brought back before HBA 09/01/05 because no inspections had been conducted and the exterior repairs were not complete. The HBA tabled case until November 2005 provided interior inspection by September 16, 2005, obtain permits by September 30th and provide timeline to complete repairs. A letter was sent 02/08/06 requesting final inspections be scheduled. A progress inspection was conducted 02/15/06. Case came back before HBA 07/06/06 and was declared dangerous, substandard and a public nuisance.

Owner Contact: Owners were present for all HBA meetings. Last inspection was scheduled 09/06/06 but no progress had been made and all permits and timelines have expired.

Financial Impact: General Funds

Budget action required: None

State Equalized value: $23,000

Estimated cost to repair: $30,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

DANGEROUS BUILDING INSPECTION REPORT

775 WASHINGTON

5/18/04

Inspection noted:

1. Front steps on home in state of collapse.
2. Broken out windows.
3. Partial boarding on home windows.
4. Need to scrape – paint exterior; or side.
5. Damaged entry doors – front and back of home.
6. Interior inspection with building, plumbing, mechanical, and electrical inspectors required.
7. All work requires construction permits. These permits must be obtained prior to work beginning.

Please contact Inspection Services with any questions at 231-724-6715.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

HENRY FALTINOWSKI, BUILDING INSPECTOR DATE

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CITY OF MUSKEGON

DANGEROUS BUILDING PROGRESS INSPECTION REPORT

775 WASHINGTON AVE
09/06/2006

Inspection noted:

Uncorrected-09/09/05

1. Working on Siding.
2. Needs interior framing completion.
3. Needs electrical, plumbing & mechanical.

Area: - Uncorrected –02/15/06

1. Make up all boxes.
2. Dining room to be a 20 amp circuit #12 wire.
3. Lights not to be on small appliance circuit.
4. Need bathroom 20 amp circuit.
5. Boxes to be accessible in attic.
6. Need wires terminated @ breakers on rough, need to verify 15 amp breakers on #12 wire where mixed with #14 wire.
7. Remove all old wiring.
8. Roughin is 60% done

Uncorrected 09/06/06

1. Electrical - Same as inspection on 02/15/06.
2. Ready for roughin, needs prior trades first.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

HENRY FALTINOWSKI, BUILDING INSPECTOR DATE

INSPECTION SUMMARY

FOR: 775 Washington

This is a two-story wood frame dwelling. Building is approximately 50% -roughin, however work appears to have stopped. The homeowner is currently engaged in the renovation of another dangerous building.

775 Washington

10/17/2006

10/17/2006

10/17/2006