# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JULY 9, 2013

### CITY COMMISSION CHAMBERS @ 5:30 P.M.

## AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **INTRODUCTIONS/PRESENTATION:**
- **CONSENT AGENDA:**

  A. **Approval of Minutes.** CITY CLERK

  B. **"Development and Reimbursement Agreement" between the City of Muskegon Brownfield Redevelopment Authority (BRA) and Terrace Point Landing, LLC (Jon Rooks).** PLANNING & ECONOMIC DEVELOPMENT

  C. **Restrictive Covenant Declaration.** PUBLIC WORKS

  D. **West Michigan Fossil Jewelry Business/Concession Contract for City of Muskegon Parks.** PUBLIC WORKS

  E. **Consideration of Bids for Southern Avenue, Fifth to Sanford (H-1688).** ENGINEERING

  F. **Intergovernmental Agreement for Traffic Signal Maintenance.** ENGINEERING

- **PUBLIC HEARINGS:**

  A. **Request for an Industrial Facilities Exemption Certificate – Northern Machine Tool.** PLANNING & ECONOMIC DEVELOPMENT

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

A. **CATV Franchise Agreement.** CITY MANAGER

- **ANY OTHER BUSINESS:**

- **PUBLIC PARTICIPATION:**

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

- **CLOSED SESSION:**

- **ADJOURNMENT:**

ADA POLICY: The City of Muskegon will provide necessary auxiliary aids and services to individuals who want to attend the meeting upon twenty four hour notice to the City of Muskegon. Please contact Ann Marie Cummings, City Clerk, 933 Terrace Street, Muskegon, MI 49440 or by calling (231) 724-6705 or TTY/TDD dial 7-1-1 to request a representative to dial (231) 724-6705.

Date: July 9, 2013

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Approval of Minutes

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SUMMARY OF REQUEST: To approve minutes of the June 25$^{th}$ City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JUNE 25, 2013

### CITY COMMISSION CHAMBERS @ 5:30 P.M.

## MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, June 25, 2013.

Mayor Gawron opened the meeting with a prayer from George Monroe from Evanston Avenue Baptist Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

**ROLL CALL FOR THE REGULAR COMMISSION MEETING:**

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

**2013-53 INTRODUCTIONS/PRESENTATION:**

**A. Recognition of Spring 2013 Citizen's Police Academy Graduates.** PUBLIC SAFETY

Public Safety Director Jeff Lewis read the resolution and thanked the 2013 Citizen's Police Academy for their faithful attendance, completion and graduation from the ten week academy.

**2013-54 CONSENT AGENDA:**

**A. Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the June 10th Commission Worksession Meeting, and the June 11th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

**B. Selection of Vinyl Siding Supplier for Fiscal Year 2013-2014.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the Community and Neighborhood Services department's selection of the Vinyl Siding Supplier for 2013-2014 fiscal year.

After reviewing all bids, the department selected the bid from Home Acres Building Supply Co, LLC, located at 2121 Harvey St, Muskegon, MI, for the price of $47.10 per building square for white and $49.50 per square for color.

The Community and Neighborhood Services department received 3 additional bids from:

1. Weber Lumber, Muskegon White - $48.00/sq Color - $49.50/sq
2. Keene Lumber, Muskegon White - $50.00/sq Color - $51.00/sq
3. Sethco Lumber, Muskegon White - $58.34/sq Color - $59.34/sq

FINANCIAL IMPACT: Funding will be disbursed from the 2013-2014 Community Development Block Grant Vinyl Siding fund.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the request.

COMMITTEE RECOMMENDATION: The funding for the Vinyl Siding program was approved by the Commission during the 2013-2014 allocation period last May.

**C. Selection of Vinyl Siding Installer for Fiscal Year 2013-2014.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the Community and Neighborhood Services to sign a contract with Tucker Construction, 1620 Fruitvale Rd, Holton, MI, to install vinyl siding at an agreed price of $39.00 per building square for the Vinyl Siding program's 2013-2014 fiscal year.

The Community and Neighborhood Services office received 2 additional bids from vinyl siding installers:

- Barnes and Telman Solutions LLC, Fruitport $72.00
- Bradfield Home Improvement, Grand Haven $85.00

FINANCIAL IMPACT: Funding will be disbursed from the 2013-2014 Community Development Block Grant Vinyl Siding fund.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the request

COMMITTEE RECOMMENDATION: The funding for the Vinyl Siding program was approved by the Commission during the 2013-2014 allocation period last May.

**D. Amendment to Current 3-Year Concession Contract to Include Motor/Jet Boat Tube Rides at Pere Marquette Park and Harbour Towne Beach.** PUBLIC WORKS

Removed per request of applicant.

**E. L-3 Video Systems.** PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to purchase 1 new server and 18 L-3 video systems out of Boonton, New Jersey, upgrades to our current video systems.

FINANCIAL IMPACT: $60,830.

BUDGET ACTION REQUIRED: The purchase is in the 2013/2014 budget.

STAFF RECOMMENDATION: Authorize staff to purchase 1 new server and 18 L-3 video systems upgrades from L-3 Communications.

**F. 2013-2014 Michigan Municipal League Membership Dues.** CITY CLERK

SUMMARY OF REQUEST: Approval to pay the 2013-2014 MML dues in the amount of $9,346. This is an increase of $220.

FINANCIAL IMPACT:

| | |
|---|---|
| MML Dues | $8,496 |
| Legal Defense Fund | $ 850 |
| Total: | $9,346 |

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

**G. Special Event Request – "Moosefest", August 17, 2013.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The Child Abuse Council has filed a special event application for their annual Moosefest music festival to be held at Heritage Landing on Saturday, August 17, 2013. This year, they would like permission to sell liquor as part of their license.

One of the Moosefest vendors, Jim Beam, would like to sell slush-type drinks containing liquor. The liquor is pre-measured and comes in a pouch, which is then frozen and served by the cup. This would a very similar product to what the former Summer Celebration sold at their "tiki bar" during that festival. No liquor will be poured from bottles.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: None.

**Motion by Vice Mayor Spataro, second by Commissioner German to approve the Consent Agenda as read except Item D which was withdrawn by the applicant.**

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

**Nays: None**

***MOTION PASSES***

**2013-55 NEW BUSINESS:**

**A. Water Rate Increase.** FINANCE

SUMMARY OF REQUEST: Staff is recommending a 10% water rate increase (from $1.54 to $1.69 per hundred cubic feet or $2.06 to $2.27 per 1000 gallons) effective October 1, 2013. The increase is needed to provide adequate cash reserves for operating and capital needs, maintain debt service coverage ratios as required by the City's water revenue bond covenants and stabilize water system finances until the new municipal customers begin water purchases from the system in 2015. Water use has declined significantly in the last decade due to economic conditions, improved conservation efforts, and rapidly rising sewage treatment costs.

FINANCIAL IMPACT: The proposed rate increase will generate an estimated $425,000 in additional water revenue in FY2014. The following table compares existing and proposed rates to other area communities and provides an estimate of the monthly impact on typical households:

| **Community** | **Water rate based on 7,500 gals*** | **Fixed Charge or Water Admin** | **Total Monthly Bill** | **Water rate based on 15,000 gals*** | **Fixed Charge or Water Admin** | **Total Monthly Bill** |
|---|---|---|---|---|---|---|
| Whitehall | $ 2.00 | $ - | $ 15.00 | $ 2.00 | $ - | $ 30.00 |
| **Muskegon (current)** | **2.06** | **-** | **15.44** | **2.0** | **-** | **30.88** |
| **Muskegon (proposed)** | **2.27** | **-** | **17.00** | **2.2** | **-** | **33.99** |
| Montague | 2.30 | 6.60 | 23.85 | 2.3 | 6.60 | 41.10 |
| Muskegon Heights | 2.38 | 7.79 | 25.64 | 2.3 | 7.79 | 43.49 |
| Grand Rapids | 2.37 | 9.99 | 27.77 | 2.3 | 9.99 | 45.54 |
| Roosevelt Park | 3.38 | 8.31 | 33.66 | 3.3 | 8.31 | 59.01 |
| Norton Shores | 3.69 | 8.22 | 35.90 | 3.6 | 8.22 | 63.57 |
| Muskegon Township | 4.34 | 9.00 | 41.60 | 4.3 | 9.00 | 74.20 |
| North Muskegon | 4.55 | 10.00 | 44.00 | 4.5 | 10.00 | 78.00 |
| Average | $ 2.93 | $ 8.56 | $ 27.99 | $ 2.93 | $ 8.56 | $ 49.98 |
| ** Water rates are expressed per 1,000 gallons of use* | | | | | | |

BUDGET ACTION REQUIRED: Revenue estimates included in the forthcoming 2013-14 budget are based on the new rate structure.

STAFF RECOMMENDATION: Approval of the resolution increasing water rates effective 10/1/2013.

**Motion by Vice Mayor Spataro, second by Commissioner Hood to adopt the resolution increasing the water rates effective October 1, 2013, as presented.**

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

**Markowski**

**Nays: None**

***MOTION PASSES***

**B. <u>Wastewater Billing Settlement Agreement.</u>** CITY MANAGER

SUMMARY OF REQUEST: To approve a Settlement Agreement with the County of Muskegon regarding a wastewater billing dispute.

FINANCIAL IMPACT: $400,000 paid to the City.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the Settlement Agreement and authorize the Mayor and Clerk to sign it. Further, the Mayor and Clerk are hereby authorized to sign the Master Contract for the Muskegon County Wastewater System.

**Motion by Commissioner Hood, second by Commissioner Wierengo to approve the Settlement Agreement and authorize the Mayor and Clerk to sign it and also to sign the Master Contract.**

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

**Nays: None**

***MOTION PASSES***

**C. <u>Farmers Market/Bike Time.</u>** CITY MANAGER

SUMMARY OF REQUEST: To continue to support the Bike Time event and approve proposed uses of City facilities during Bike Time in 2014, as they specifically relate to the Farmers Market:

1. Close Western Avenue from Eighth Street to Terrace Street (except to motorcycles) for use as Bike Time's "Steel Horse Alley";
2. Lease the stalls in the south building to Bike Time from Thursday through Sunday (only charge for Thursday and Saturday), including the parking spaces between the building and Western Avenue.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

COMMITTEE RECOMMENDATION: The Mayor appointed an internal committee comprised of Commissioners and staff, and the committee supports the request.

**Motion by Vice Mayor Spataro, second by Commissioner German to table and direct staff to have a meeting with Market Master, Vendors, Bike Time, City Staff,**

**and Commission.**

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

**Nays: Gawron**

***MOTION PASSES***

**ANY OTHER BUSINESS:** The summer program at Muskegon High School was discussed.

**PUBLIC PARTICIPATION:** Public comments were received.

**ADJOURNMENT:** The City Commission Meeting adjourned at 6:53 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Commission Meeting Date: July 9, 2013

Date: June 26, 2013

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department

RE: "Development and Reimbursement Agreement" between the City of Muskegon Brownfield Redevelopment Authority (BRA) and Terrace Point Landing, LLC (Jon Rooks)

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SUMMARY OF REQUEST: The DDA Plan Amendment and Brownfield Redevelopment Plan Amendment & Resolution for Terrace Point Landing, LLC have been approved by the BRA, DDA and City Commission. The last document for approval is the "Development and Reimbursement Agreement" ("Agreement"). The Agreement outlines the tax capture and reimbursement process for the project.

FINANCIAL IMPACT: Future Brownfield Development (BRA) TIF capture will be directed to Mr. Rooks for reimbursement of loans he is securing for redevelopment of the property.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To endorse the approval by the BRA for the "Development and Reimbursement Agreement" between the City of Muskegon BRA and Terrace Point Landing, LLC.

COMMITTEE RECOMMENDATION: The BRA met on June 26, 2013 and approved the "Agreement".

## DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT AND REIMBURSEMENT AGREEMENT (the "**Agreement**") is made on June 26 2013, by and between the CITY OF MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY, a Michigan public body corporate, whose address is 933 Terrace Street, Muskegon, Michigan 49440 (the "**Authority**"), and TERRACE POINT LANDING, LLC, whose address is 940 Monroe Avenue NW, Suite 155, Grand Rapids, Michigan 49503 (the "**Developer**").

### RECITALS

A. Pursuant to P.A. 381 of 1996, as amended, ("**Act 381**"), the Authority adopted a brownfield plan on April 9, 2013 (the "**Brownfield Plan**") to add approximately 11 acres of vacant property located at the end of Terrace Point Road in downtown Muskegon, Michigan (the "**Property**"), which is further described in Exhibit A.

B. The Developer owns the Property, which is included in the Brownfield Plan as an "eligible property" because it is a "facility", as defined by Part 201 of the Natural Resources and Environmental Protection Act ("**Part 201**"). The Developer is not a liable party, under Part 201, for the contamination on the Property.

C. The Developer intends to conduct eligible activities on the Property in order to address environmental conditions and redevelop the site into site condominiums (the "**Project**"). The Project will likely include baseline environmental assessment activities, due care and additional response activities, site preparation and infrastructure improvement eligible activities under Act 381 (the "**Eligible Activities**"), all as described in the Brownfield Plan and eligible for reimbursement under Act 381. The total cost of the Eligible Activities, including contingencies and interest (as described in paragraph 1 below), are not to exceed $3,800,000 (the "**Total Eligible Brownfield TIF Costs**").

D. Act 381 permits the Authority to capture and use the school tax (where applicable) and local property tax revenues generated from the incremental increase in property value of a redeveloped brownfield site constituting an "eligible property" under Act 381 to pay or to reimburse

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the payment of Eligible Activities conducted on the "eligible property" (the "**Brownfield TIF Revenue**").

E. In accordance with Act 381, the parties desire to establish the procedure for using the available Brownfield TIF Revenue generated from the Property to reimburse the Developer for completion of Eligible Activities on the Property in an amount not to exceed the Total Eligible Brownfield TIF Costs.

NOW, THERFORE, the parties agree as follows:

1. Reimbursement Source.

During the Term (defined below) of this Agreement, and except as set forth in paragraph 2 below, the Authority shall reimburse the Developer for its Eligible Activities costs conducted on the Property from the Brownfield TIF Revenue collected from the real and personal property taxes on the Property. The amount reimbursed to Developer for the Eligible Activities shall not exceed the Total Eligible Brownfield TIF Costs, which consists of $2,000,645 of principal Eligible Activities plus simple interest calculated at a rate of five (5) percent on Developer's unpaid Eligible Activities from the date they have been approved for reimbursement by the Authority. The Authority shall capture Brownfield TIF Revenue from the Property and reimburse Developer for Eligible Activities (with interest) until the earlier of the Developer being fully reimbursed or December 31, 2037. The Authority may choose at anytime to pay the entire balance of Developer's unpaid principal cost (plus any accrued interest) of the approved Eligible Activities and avoid paying additional interest. Unless otherwise prepaid by the Authority, payments to the Developer shall be made on a semi-annual basis as incremental local and school taxes are captured and available.

2. Reimbursement Process.

(a) Developer shall submit to the Authority, not more frequently than on a quarterly basis, a "Request for Cost Reimbursement" of Eligible Activities paid for by the Developer during the prior period. All costs for the Eligible Activities must be consistent with the approved Brownfield Plan and Act 381 Work Plan, as applicable. The Developer must include documentation sufficient for the

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Authority to determine whether the costs incurred were for Eligible Activities, including detailed invoices and proof of payment. Copies of all invoices for Eligible Activities must note what Eligible Activities they support.

(b) Unless it disputes whether such costs are Eligible Activities within thirty (30) days after receiving a Request for Cost Reimbursement from Developer, the Authority shall pay to the Developer the amounts for which submissions have been made pursuant to paragraph 2(a) of this Agreement from which the submission may be wholly or partially paid from available Brownfield TIF Revenue from the Property as described in paragraph 1. The Developer shall cooperate with the Authority's review by providing information and documentation to supplement the Request for Cost Reimbursement which may be reasonably requested by the Authority. If a partial payment is made by the Authority because of insufficient Brownfield TIF Revenue, the Authority shall make additional payments toward the remaining amount within thirty (30) days of its receipt of additional Brownfield TIF Revenue from the Property until all of the amounts for which submissions have been made, have been fully paid to Developer or the end of the Term (defined below), whichever occurs first. The Authority is not required to reimburse the Developer from any other source. If the Authority determines that requested costs are deemed ineligible for reimbursement, the Authority shall notify the Developer in writing of its reasons for rejection within the thirty (30) day time period for review. The Developer shall then have thirty (30) days to provide supplemental information or documents to the Authority demonstrating that the costs are eligible for reimbursement.

(c) The Authority shall send all payments to the Developer by registered or certified mail addressed to the Developer at the address shown above, or by electronic funds transfer directly to Developer's bank account. Developer may change the address by providing written notice sent by registered or certified mail to the Authority.

3. Term of Agreement.

The Authority's reimbursement of the Total Eligible Brownfield TIF Costs under this Agreement shall terminate the earlier of the date when all reimbursements to Developer required

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under this Agreement have been made or December 31, 2037 (the "**Term**"). If the Brownfield TIF Revenue ends before the full reimbursement of all of Developer's Total Eligible Brownfield TIF Costs, the last reimbursement payment by the Authority shall be the summer and winter tax increment collected during the final year of this Agreement.

4. Adjustments

If, due to an appeal of any tax assessment or reassessment of any portion of the Property or for any other reason the Authority is required to reimburse any Brownfield TIF Revenue to any tax levying unit of government, the Authority may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing the Developer. If all amounts due the Developer under this Agreement have been fully paid or the Authority is no longer obligated to make any further payments to the Developer, the Authority shall invoice the Developer for the amount of such reimbursement and the Developer shall pay the Authority such invoiced amount within thirty (30) days of the Developer's receipt of the invoice. Amounts invoiced and paid to the Authority by the Developer pursuant to this paragraph shall be reinstated as Eligible Activities for which the Developer shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement. Nothing in this Agreement shall limit the right of the Developer to appeal any tax assessment. Eligible Activities not approved for school tax capture are intended to be paid for through local-only property tax revenues.

5. Legislative Authorization.

This Agreement is governed by and subject to the restrictions set forth in Act 381. If there is legislation enacted in the future that alters or affects the amount of Brownfield TIF Revenue subject to capture, eligible property, or eligible activities, then the Developer's rights and the Authority's obligations under this Agreement shall be modified accordingly as required by law, or by agreement of the parties.

6. Notices.

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All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Any party may change the address by written notice sent by registered or certified mail to the other party.

7. Assignment.

This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other party, which shall not be unreasonably withheld, *provided, however*, the Developer may assign its interest in this Agreement to an affiliate without the prior written consent of the Authority, provided, any such assignee shall acknowledge to the Authority in writing on or prior to the effective date of such assignment its obligations upon assignment under this Agreement, *provided, further*, that the Developer may make a collateral assignment of the Brownfield TIF Revenue for project financing purposes. As used in this paragraph, "affiliate" means any corporation, company, partnership, limited liability company, trust, sole proprietorship or other entity or individual which (a) is owned or controlled by such Developer, (b) owns or controls such Developer or (c) is under common ownership or control with such Developer. This Agreement shall be binding upon any successors or permitted assigns of the parties.

8. Entire Agreement.

This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

9. Non-Waiver.

No delay or failure by any party to exercise any right under this Agreement, and no partial or single exercise of that right, constitutes a waiver of that or any other right, unless otherwise expressly provided herein.

10. Headings.

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

11. Governing Law.

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This Agreement shall be construed in accordance with an governed by the laws of the State of Michigan.

12. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. Binding Effect.

The provisions of this Agreement shall be binding upon and inure to the benefit of all the parties and their respective heirs, legal representatives, successors and assigns.

The parties have executed this Agreement on the date set forth above.

CITY OF MUSKEGON BROWNFIELD
REDEVELOPMENT AUTHORITY

By: Michael Kleen

Its: Secretary

TERRACE POINT LANDING, LLC

By: Jon Rooks

Its: Manager

9168560-1

# EXHIBIT A

## Property Description

Parcel #61-24-205-558-0001-00; Legal description as follows:

CITY OF MUSKEGON REVISED PLAT OF 1903 THAT PART OF BLK 558 AS RECORDED IN L 3 OF PLATS P 71 MUSKEGON COUNTY MI INCLUDING ALL LANDS MADE BY LAND-FILL WHICH MAY HAVE BEEN SUBSQUEOUS LANDS AT THE TIME OF THE DEDICATION OF SD REVISED PLAT OF 1903 DESC AS FOLS: COM @ INT NELY LN TERRACE ST BEING SWLY LN BLK 557 EXTND TO CL VAC WATER ST TH N 62D 44M 00S W ALNG NELY LN SD TERRACE ST EXTND 381.45 FT TH WLY ALNG NLY LN SD TERRACE ST ALNG ARC OF A 302.48 FT R CURVE TO LT A DIST OF 269.86 FT TO LN BET LOTS 5 & 6 SD BLK 558 (LC SD CURVE BEARS N 88D 17M 30S W 261 FT CENTRAL ANGLE SD CURVE 51D 07M 00S) TH N 46D 09M 15S W ALNG SD LN BET LOTS 5 & 6 A DIST 534.25 FT TO POB THIS DESC TH N 27D 25M 55S E 925.82 FT TO A POINT HEREINAFTER REFERRED TO AS "POINT A" TH CONT N 27D 25M 55S E 5 FT M/L TO SHORE MUSKEGON LAKE TH NWLY & SWLY ALNG SHORE MUSKEGON LAKE 1350 FT M/L TO SD LN BET LOTS 5 & 6 SD BLK TH S 46D 09M 15S E ALNG SD LN BET LOTS 5 & 6 A DIST 820 FT M/L TO POB EXC PART TH'OF INCLUDED IN FOL DESC PARCEL THAT PART BLKS 558 & 563 DESC AS FOL COM @ INT NELY LN TERRACE ST BEING SWLY LN BLK 557 EXTND TO CL VAC WATER ST TH N 62D 44M 00S W ALNG NELY LN SD TERRACE ST EXTND 381.45 FT TH WLY ALNG NLY LN SD TERRACE ST ALNG ARC OF A 302.48 FT R CURVE TO LT A DIST 477.51 FT (LC SD CURVE BEARS S 72D 02M 30S W 429.45 FT CENTRAL ANGLE SD CURVE IS 90D 27M 00S) TH S 26D 49M 00S W ALNG NELY LN SD TERRACE ST 225.07 FT TO A POINT HEREINAFTER REFERRED TO AS POB FOR EASEMENT TH NLY ALNG ARC OF A 517 FT R CURVE TO RT A DIST 705.40 FT (LC SD CURVE BEARS N 23 D 29M 25S W 651.95 FT CENTRAL ANGLE SD CURVE IS 78D 10M 34S) TH N 15D 35M 52S E 187.25 FT TH ELY NLY & WLY ALNG ARC OF A 75 FT R CURVE TO LT A DIST 232.88 FT (LC SD CURVE BEARS N 18D 20M 25S W 149.98 FT CENTRAL ANGLE SD CURVE IS 177D 54M 42S) TO POB THIS DESC TH SWLY ALNG ARC OF A 75 FT R CURVE TO LT A DIST 105.61 FT (LC SD CUVE BEARS S 32D 21M 55S W 97.10 FT CENTRAL ANGLE SD CURVE IS 80D 40M 47S) TH N 61D 06M 15S W 139.74 FT TH SWLY ALNG ARC OF 172 FT R CRUVE TO RT A DIST 89.56 FT (LC SD CURVE BEARS S 58D 58M 45S W 88.55 FT CENTRAL ANGLE SD CURVE IS 29D 50M 00S) TH S 73D 53M 45S W 127.91 FT TH N 16D 06M 15S W 75 FT TH S 73D 53M 45S W 110 FT TH N 16D 06M 15S W 250 FT M/L TO WATER'S EDGE MUSKEGON LAKE TO A POINT HEREINAFTER REFFERED TO AS "POINT A" TH RECOM AT POB TH N 17D 17M 45S W 326.55 FT TH N 66D 15M 15S W 275 FT M/L TO WATER'S EDGE MUSKEGON LAKE TH SWLY ALNG SD WATER'S EDGE MUSKEGON LAKE 350 FT M/L TO ABOVE MENTIONED "POINT A" EXC THAT PART OF BLK 558 AS RECORDED IN L 3 OF PLATS P 71 MUSKEGON COUNTY MI INCLUDING ALL LANDS MADE BY LAND-FILL WHICH MAY HAVE BEEN SUBSQUEOUS LANDS AT THE TIME OF THE DEDICATION OF SD REVISED PLAT OF 1903 DESC AS FOLS: COM @ WESTERNMOST CRNR MUSKEGON LAKESHORE SMARTZONE CONDOMINIUM SUBDIVISION NO. 100 AS AMENDED: TH N 27 DEG 25 MIN 55 SEC E 198.94 FT ALNG THE WLY LN OF SD CONDO TO POB TH N 62 DEG 05 MIN 15 SEC W 106.63 FT TH S 27 DEG 54 MIN 45 SEC W 61.66 FT TO THE NTHLY LINE OF TERRACE PT DR TH NWLY ALNG SD LINE 91.59 FT ALNG A 75.00 FT RAD CURVE TO THE LEFT THE LONG CHORD OF WHICH BEARS N 62 DEG 02 MIN 15 SEC W 86.00 FT TH N 27 DEG 54 MIN 45 SEC E 127.66 FT TH S 62 DEG 05 MIN 15 SEC E 192.07 FT TO THE WLY LINE OF SD CONDOMINIUM TH S 27 DEG 25 MIN 55 SEC W 66.00 FT ALNG SD LN TO POB.

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Date: July 9, 2013

To: Honorable Mayor and City Commissioners

From: DPW

RE: Restrictive Covenant Declaration

## SUMMARY OF REQUEST:

Authorize the mayor and clerk to sign the attached declaration of restrictive covenant at the public service building, 1350 E. Keating and authorize Westshore Engineering to record said restriction.

## FINANCIAL IMPACT:

The cost of recording which is estimated to be less than $200.00

## BUDGET ACTION REQUIRED:

None

## STAFF RECOMMENDATION:

Authorize the mayor & clerk to sign off on the declaration as well as authorize Westshore Engineering record the restriction if was approved.

## COMMITTEE RECOMMENDATION:

WESTSHORE
CONSULTING
*Engineers ■ Scientists ■ Surveyors*

*WestshoreConsulting.com*

***Muskegon***
2534 Black Creek Road
Muskegon, Michigan 49444
*Ph:* (231) 777-3447
*Fx:* (231) 773-3453

***Grand Haven***
(616) 844-1260

***Manistee***
(231) 920-5818



June 27, 2013

Mr. Mohammed Al-Shatel, P.E.
City of Muskegon - Engineering
933 Terrace Street
P.O. Box 536
Muskegon, MI 49443-0536

*Re:* *Groundwater Clean-up and Institutional Controls – Muskegon Public Service Building, 1350 East Keating Avenue, Muskegon, Michigan*

Dear Mr. Al-Shatel:

Per our recent telephone conversation, I have enclosed the Restrictive Covenant for the groundwater clean-up at the Muskegon Public Service Building on Keating Avenue, and a Notice to Local Units of Government (LUG) of Land Use Restrictions.

As you are aware, we had been working with Mr. Kelly DeFrench on this project. The project is very near completion, that is, Westshore is ready to submit the Closure Report to the Michigan Department of Environmental Quality (MDEQ).

The closure of the contamination relies on a Restrictive Covenant for a portion of the City's property that will restrict the groundwater use in the area of contamination. Without restricting the groundwater use on the City's property, the groundwater clean-up will continue for many years costing the City far more. The costs would include periodic groundwater monitoring and reporting for an undermined amount of time. Restrictive Covenants are already in place (i.e., have been recorded with the Register of Deeds) for the adjacent properties across Keating Avenue to the south. The last remaining hurdle towards the closure is to file the Restrictive Covenant for the City's property. The enclosed document utilizes the MDEQ's required format and was reviewed and approved by the City and the City of Muskegon's Attorney on March 18, 2013 per an email from Mr. DeFrench. Per the City of Muskegon's Attorney, the Restrictive Covenant will need to be signed and notarized by the Mayor and the City Clerk.

The enclosed Notice to LUG needs to be signed by yourself and is simply a notice required by the MDEQ to any relevant LUG to provide the recorded Restrictive Covenant for their files.

Please have the enclosed Restrictive Covenant signed and notarized, and the Notice to LUG signed and return both documents back to Westshore in the enclosed pre-addressed stamped envelope.

Westshore will then file the Restrictive Covenant with the Register of Deeds who will record it. Once the recorded Restrictive Covenant is returned back to Westshore from the Register of Deeds, we will provide the copies of it along with the Notice to LUG.

Westshore will then submit the Closure Report to the MDEQ along with all of the proper documentation for the Institutional Controls. The MDEQ then has 90 days to determine if they are going to audit the Closure Report, and seven days thereafter to notify the submitter of their desire to audit it. If no notice is received within seven days, the site is considered approved after 90 days has elapsed since the MDEQ received the Closure Report. If a notice of audit is received, the MDEQ then has 180 days from receipt of the Closure Report to complete the audit, and 14 days thereafter to notify you of the audit results.

If you have any questions or wish to discuss these matters further, please call me, or I would be happy to meet in person at your convenience.

Sincerely,

WESTSHORE CONSULTING

Roger A. Bour
Senior Project Manager

RAB/jlg/339-29

Restrictive Covenant
Notice to Local Units of Government

cc: Mr. Robert Schulz, Westshore Consulting

DEQ MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY – REMEDIATION & REDEVELOPMENT DIVISION
PO BOX 30426, LANSING, MI 48909-7926, Phone 517-373-9837, Fax 517-373-2637, E-mail DEQ--TANKS@michigan.gov

# NOTICE TO LOCAL UNIT(S) OF GOVERNMENT OF LAND USE RESTRICTIONS

*This information and form is required under Sections 21310a(5) and 21316 of Part 213, Leaking Underground Storage Tanks (LUST), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Failure to comply with the provisions of this Act may result in civil fines not to exceed $10,000 for each day the violation continues or failure to comply continues.*

**Instructions:** (1) Use this form to provide notice of land use restrictions that are part of the corrective action plan to the Local Unit(s) of Government (LUG). (2) If corrective action is based on the use of institutional controls regarding off-site migration of regulated substances, submit a draft copy of this notification with the corrective action plan and wait for Remediation & Redevelopment Division (RRD) approval before providing notice to the LUG. If the institutional controls are for on-site contamination, the owner/operator may proceed with providing notice to the LUG. (3) Send the notice to the city, village or township clerk. Provide a copy to the County/District Health Department if groundwater exceeds Tier 1 residential criteria. (4) Submit a copy of the notice and proof of providing the notice with the Closure Report (EQP 3843) to the appropriate RRD District Office in form EQP4410. This notice does not constitute a warranty or representation of any kind by the State of Michigan that the corrective actions performed in accordance with this notice will result in the achievement of the remedial criteria established by Law, or that the property is suitable for any particular use.

| | |
|---|---|
| City of Muskegon | Muskegon County Environmental Health Department |
| Name of Local Unit of Government | Name of Local Unit of Government |

**Notice to the Local Unit of Government Receiving this Form:**
A corrective action plan for the site named below has been developed as a result of a release from an underground storage tank. This form and the attachments are to provide the local unit(s) of government notice of the land use restrictions that are part of the corrective action plan. A copy of the institutional control mechanism(s) in the form of a Corrective Action Notice to Register of Deeds, and/or Restrictive Covenant, and/or alternate mechanism is/are attached. The attached institutional control mechanism(s) describe the land use restrictions and the land where the restrictions apply.

Owner or Operator: City of Muskegon – Department of Public Works

Site Name: City of Muskegon Public Service Building

Site Address: 1350 Keating Avenue City: Muskegon State: MI Zip: 49442

Contact Person: Mohammed Al-Shatel, City Engineer Phone Number: (231) 724-6944

Mailing Address: 933 Terrace Street City: Muskegon State: MI Zip: 49443

Qualified Underground Storage Tank Consultant : Westshore Consulting

Address: 2534 Black Creek Road City Muskegon State: MI Zip: 49444

Contact Person: Roger Bour, Project Manager Phone Number: (231) 777-3447

I hereby attest to the accuracy of the statements in this document and all attachments. I further certify that the language on this form has not been modified.

Owner or Operator's Signature ____________________ Date ____________

**DECLARATION OF RESTRICTIVE COVENANT**
**FOR A RESTRICTED RESIDENTIAL CORRECTIVE ACTION**

MDEQ Reference No: RC-RRD-213-16-067

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Muskegon County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to regulated substances present at the Property located at 1350 East Keating Avenue, City of Muskegon, Muskegon County and legally described in the attached Exhibit 2 (Legal Description of the Property) that are inconsistent with the environmental conditions at the Property. Exhibit 2 (Survey of Property and Limits of Land or Resource Use Restrictions) provides a survey of the Property that depicts the area subject to restriction and contains additional legal descriptions that distinguish those portions of the Property that are subject to the land and/or resource use restrictions in this Restrictive Covenant.

The Property is associated with a release of hazardous substances at the Muskegon Public Service Building site (Facility ID No. 0-0000575) for which a Closure Report (CR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the CR dated July 12, 2013. A copy of the CR is available from the Michigan Department of Environmental Quality (MDEQ), Remediation and Redevelopment Division (RRD) Grand Rapids District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the Muskegon County Register of Deeds based upon the corrective action measures for the site to: 1) restrict unacceptable exposures to regulated substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA; and 3) assure the exposure control measures relied upon in the CR are effective.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective action was implemented by the City of Muskegon. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the CR; future changes in the environmental condition of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the CR; or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. The adequacy of the corrective action undertaken pursuant to the CR may not have been reviewed by the MDEQ.

Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"Property" means the real property as described in Exhibit 1 (Legal Description of the Property) of this Restrictive Covenant that is subject to the restrictions, terms and conditions described herein.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA and Part 213 of the NREPA, shall have the same meaning in this document as in Part 3 and Part 213 of the NREPA, as of the date this Restrictive Covenant is filed.

Summary of Environmental Conditions and Corrective Action.

The City of Muskegon Public Service Building (MPSB) site, located at 1350 East Keating Avenue, Muskegon, Michigan, historically stored and dispensed gasoline to fuel City owned vehicles, this use continues currently. A release from the leaking underground storage tank (UST) system was discovered during the upgrade of the UST system and reported to the MDEQ in August 1990. The three tanks consisted of two 15,000-gallon unleaded gasoline USTs and one 8,000-gallon diesel fuel UST. Because the release was confirmed to be from beneath the dispensers, the USTs were upgraded and remained in operation. Initial abatement measures consisted of the replacement of the leaking pipe joints and the excavation of contaminated soil. The excavation extended downward to the top of the water table, present at about 15 feet below ground surface (bgs). In November 1998, the UST systems were taken out of service, with the two 15,000-gallon unleaded gasoline USTs being removed from the ground, and the 8,000-gallon diesel UST closed-in-place beneath the existing dispenser island. The diesel UST was situated in close proximity to the southern edge of the building. Odors were noted below the diesel and gasoline USTs at that time, and additional impacted soils were excavated from the area surrounding the USTs. The excavation extended to below the top of the aquifer, adequately removing all impacted soil. A 15,000-gallon compartmentalized unleaded gasoline/diesel tank was installed in the former tank basin following the removal of the impacted soil. The excavation was backfilled with a mixture of clean native and non-native fill.

Groundwater remediation was conducted using a purge well in conjunction with activated granular carbon starting in March 1997. The pump and treat system was deactivated in May

2007 and at that time it was feasible to discontinue the use of the purge well system and to pursue natural attenuation and the use of institutional controls at the MPSB site. Regular (quarterly) groundwater monitoring occurred at the site for a number of years, including the most recent sampling round conducted in June 2011. Based on the 2011 groundwater sampling, the remaining hydrocarbon plume extends from the tank basin to the south-southwest across Keating Avenue and under a portion of two downgradient properties, as well as a portion of Theresa Street. The existing shallow groundwater plume is stable and has been horizontally and vertically delineated.

Soil and groundwater investigations conducted at the site have confirmed that volatile organic compounds have impacted the onsite groundwater in concentrations that exceed MDEQ Risk Based Screening Levels (RBSLs). Groundwater contaminants that exceed MDEQ RBSLs include toluene, ethyl benzene, xylenes, 1,2,4-trimethlybenzene, 1,3,5-trimethlybenzene, total lead, total and dissolved iron, and total and dissolved manganese. Contaminants are not present in the onsite soils in concentrations that exceed MDEQ criteria.

No soil contamination remains onsite in concentrations that exceed MDEQ residential Tier 1 RBSLs. Groundwater contamination remains present at levels that do not allow unrestricted use of the Property. Public health will be protected by preventing the use of the groundwater for ingestion.

**NOW THEREFORE,**

1. <u>Declaration of Land or Resource Use Restrictions.</u>

The City of Muskegon, as Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. <u>Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances</u>. The Owner shall prohibit activities within the portions of the Property designated in Exhibit 2 (Survey of Property and Limits of Land or Resource Use Restrictions) that may result in exposures above levels established in the CR. These prohibited activities include:

(i.) The construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:

(a) Wells and other devices constructed for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of regulated substances into the environment are permitted, provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations, and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal laws or regulations.

(b) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations, and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

b. Prohibited Activities to Ensure Effectiveness and Integrity of the Corrective Action. The Owner shall prohibit activities on the Property that may interfere with any element of the CR, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the CR.

2. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located within the portions of the Property designed in Exhibit 2 in accordance with the applicable requirements of Sections 21304b of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

3. Access. The Owner grants to the MDEQ and the City of Muskegon, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the CR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the CR. The right of access provided to the City of Muskegon above is not required under Part 213 for the corrective action to be considered approved. This provision was agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, The MDEQ will not enforce the Owner's obligation to provide access to the City of Muskegon.

4. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the CR, and this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 21310a(2)(c) of the NREPA.

5. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in a finding by the MDEQ that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.

6. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until it is determined that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional corrective actions by those parties responsible for performing corrective action at the Property or to comply with Section 21304c of the NREPA.

7. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, and the City of Muskegon may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other

provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, the City of Muskegon has caused this Restrictive Covenant, MDEQ Reference No. RC-RRD-213-13-067, to be executed on this ____ day of ____________, 2013.

**City of Muskegon**

By: ______________________________

Name: Stephen J. Gawron

Title: Mayor

**City of Muskegon**

By: ______________________________

Name: Ann Marie Cummings

Title: City Clerk

STATE OF Michigan
COUNTY OF ____________

The foregoing instrument was acknowledged before me this ____ day of ____________, 2013, by Stephen J. Gawron, Mayor of the City of Muskegon, and Ann Marie Cummings, City Clerk of the City of Muskegon, a City in the State of Michigan.

______________________________
Notary Public Signature

______________________________
Notary Public, State of ______________
County of ______________
My commission expires: ______________
Acting in the County of ______________

Prepared by & when recorded return to:
Roger Bour, Project Manager
Westshore Consulting
2534 Black Creek Road
Muskegon, MI 49444

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

## Furnished Description:

LAND IN THE CITY OF MUSKEGON, COUNTY OF MUSKEGON, AND STATE OF MICHIGAN DESCRIBED AS FOLLOWS:

SECTION 33, T10N, R16W:

THE EAST 7.5 ACRES OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4;

EXCEPT THE NORTH 350 FEET THEREOF;

ALSO, COMMENCE AT THE SOUTHWEST CORNER OF SAID EAST 7.5 ACRES;

THENCE WEST 197 FEET;

THENCE NORTH 633.075 FEET;

THENCE EAST 196.715 FEET TO THE WEST LINE OF SAID 7.5 ACRES;

THENCE SOUTH 632.5 FEET TO BEGINNING.

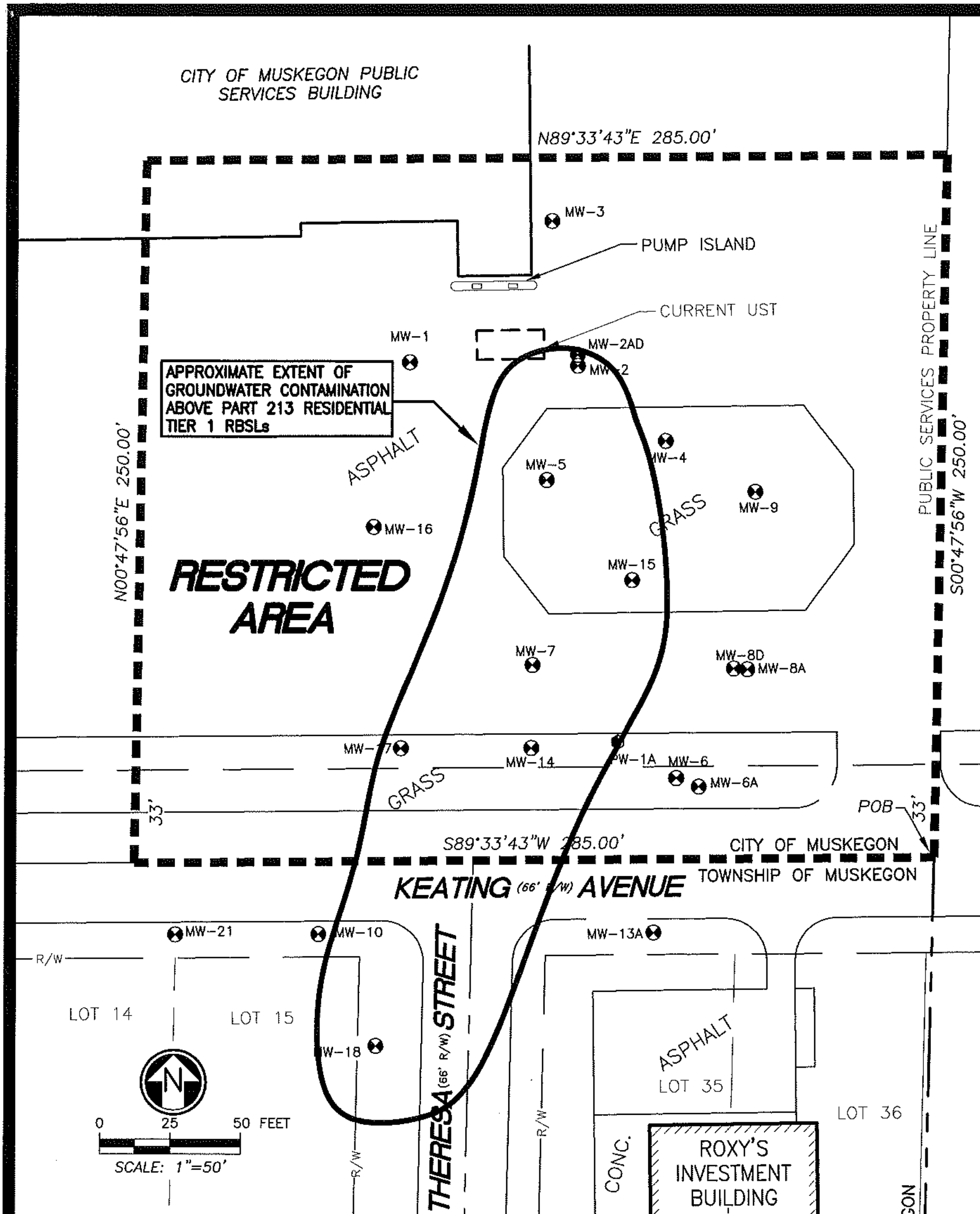
CONTAINING 8.17 ACRES, MORE OR LESS.

## Tax Parcel Identification Number:

61-24-133-200-0009-00

**EXHIBIT 2**

**SURVEY OF THE PROPERTY AND**
**LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**
(See Attached)




**WESTSHORE CONSULTING**
*Engineers ▪ Scientists ▪ Surveyors*

www.WestshoreConsulting.com

| 2534 Black Creek Road<br>Muskegon, MI 49444<br>(231) 777-3447 | 250B Washington Avenue<br>Grand Haven, MI 49417<br>(616) 844-1260 | P.O. Box 7<br>Manistee, MI 49660<br>(231) 920-5818 |
|---|---|---|

**City of Muskegon Public Services Bldg**
1350 East Keating Avenue
City of Muskegon, Michigan

**RESTRICTED AREA**

| | |
|---|---|
| Checked: | RLS |
| Date: | 02-26-13 |
| Drawn by: | BDK |
| Date: | 02-26-13 |
| File No.: | 339-29 |
| Exhibit: | 2 |

C:\Land Projects 2004\339-29 Public Services\dwg\339-29 RESTRICTIVE AREA.dwg 3/11/2013 2:12:57 PM EDT

WESTSHORE
CONSULTING
Engineers ▪ Scientists ▪ Surveyors

WestshoreConsulting.com

**Muskegon**
2534 Black Creek Road
Muskegon, MI 49444
Ph: (231) 777-3447
Fx: (231) 773-3453

**Grand Haven**
(616) 844-1260

**Manistee**
(231) 920-5818

**Exhibit 2**



**Legal Description of Restricted Area**

Restrictive Covenant Legal Description for the Restricted Area at the Property located at 1350 East Keating Avenue, City of Muskegon, Muskegon County, Michigan:

RESTRICTED AREA

AN AREA OF RESTRICTED GROUNDWATER USE LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 33, TOWN 10 NORTH, RANGE 16 WEST, CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS;

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33;

THENCE SOUTH 00 DEGREES 36 MINUTES 01 SECONDS WEST ALONG THE EAST SECTION LINE, A DISTANCE OF 1312.06 FEET;

THENCE SOUTH 89 DEGREES 32 MINUTES 13 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 A DISTANCE OF 1327.88 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 FOR THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 33 MINUTES 43 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 285.00 FEET;

THENCE NORTH 00 DEGREES 47 MINUTES 56 SECONDS EAST, A DISTANCE OF 250.00 FEET;

THENCE NORTH 89 DEGREES 33 MINUTES 43 SECONDS EAST, A DISTANCE OF 285.00 FEET;

THENCE SOUTH 00 DEGREES 47 MINUTES 56 SECONDS WEST ALONG THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1.64 ACRES, MORE OR LESS.

As a professional surveyor of the State of Michigan, I do hereby certify that I have prepared the legal description as written above. That this description was prepared from documents furnished by others and that it was not prepared for the purpose of conveyance of title and is, therefore, exempt from the requirements of Section 109, Paragraphs 3 and 4 of P.A. 591 of 1996.

Stephen V. Vallier, P.S.

STATE OF MICHIGAN
Stephen V. Vallier
PROFESSIONAL SURVEYOR
No. 28428
LICENSED PROFESSIONAL SURVEYOR

**AGENDA ITEM NO._____________**

**CITY COMMISSION MEETING ____________________**

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: July 9, 2013

SUBJECT: West Michigan Fossil Jewelry Business/Concession Contract for City of Muskegon Parks.

**SUMMARY OF REQUEST:**

Staff is asking permission to enter into 1-year contractual agreement with Kevin VanBrocklin of West Michigan Fossil Jewelry at Pere Marquette Park, located within the City of Muskegon, to sell various jewelry items as outlined in the attached proposal.

**FINANCIAL IMPACT:**

Contract revenue will be 10% of gross receipts, per the Business/Concession Contract.

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

Authorize DPW staff to enter into a 1-year Business/Concession Contract with Kevin Van Brocklin of West Michigan Fossil Jewelry.

**COMMITTEE RECOMMENDATION:**

# Proposal
# For
# West Michigan Fossil Jewelry

My name is Kevin VanBrocklin. I have lived in Bluffton for 35 years. I am proposing to add to the educational structure of our beautiful city by being a vendor at Pere Marquette.

I fashion necklaces, earrings and key chains from fossilized creatures, corals, shells, and stromatolites which are locally found. These are a part of Michigan's Tropical Pre-History!

I am currently selling my packaged products at the Muskegon Museum of Art and The Village Gift Shoppe.

I believe my product will bring awareness to tourists as well as locals about the ancient history of their surroundings.

Thank you for your time and consideration.

Kevin VanBrocklin
West Michigan Fossil Jewelry

# CITY OF MUSKEGON
## BUSINESS REGISTRATION APPLICATION
## $30.00 REGISTRATION FEE

Enclose the Fire Safety Audit Worksheet with the application. If you are non-profit, please enclose a copy of your Non-Profit Status.

PLEASE TYPE OR PRINT (FOR QUESTIONS CALL; (231) 724-6705)

| | |
|---|---|
| BUSINESS NAME (or DBA if used): West Michigan Fossil Jewelry | Check one box only: ☒ Individual ☐ Corp ☐ Partnership ☐ Non-Profit ☐ LLC ☐ Government ☐ Other (Explain) ☐ Single Member LLC * |

COMPLETE COMPANY NAME:

BUSINESS CHARACTER/CATEGORY:

| FEIN# | HOURS OF OPERATION: | NUMBER OF EMPLOYEES: 1 |
|---|---|---|

| | |
|---|---|
| BUSINESS PHONE: 231-759-8733 | START-UP-DATE: |

MAILING ADDRESS (for renewal and correspondence):

Number and Street: 3366 Plum Ave.

City, State, Zip: Muskegon, MI 49441

PHYSICAL ADDRESS OF BUSINESS IN MUSKEGON:

Number and Street:

City, State, Zip:

| | |
|---|---|
| OWNER/MANAGER: Kevin J. VanBrocklin | TITLE: Owner |
| RESIDENCE ADDRESS:<br>Number and Street: 3366 Plum Ave.<br>City, State, Zip: Muskegon, MI 49441 | HOME TELEPHONE:<br>BUSINESS TELEPHONE: |

DRIVER LICENSE NUMBER:

EMERGENCY CONTACT:
Name: Lois VanBrocklin
Address: 3366 Plum Ave. Phone: 231-759-8733

I certify that the above information is correct to the best of my knowledge.

X Kevin VanBrocklin
Signature of Applicant

6/23/13
Date

Date: July 9, 2013

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Consideration of Bids for:
Southern Ave., Fifth to Sanford (H-1688)

## SUMMARY OF REQUEST:

Award the reconstruction contract for Southern Ave. from Fifth to Sanford to McCormick Sand out of Twin Lake since they were the lowest responsible bidder with a total bid price of $236,732, see attached bid tabulation.

## FINANCIAL IMPACT:

The construction cost of $236,732 plus engineering

## BUDGET ACTION REQUIRED:

none

## STAFF RECOMMENDATION:

Award the contract to McCormick Sand.

## COMMITTEE RECOMMENDATION:

H-1688. S-665, W-739
SOUTHERN AVE., FIFTH ST. TO SANFORD ST.

| | | | CONTRACTOR<br>ADDRESS<br>CITY/ST/ZIP | ENGINEER'S ESTIMATE | | ACCURATE EXCAVATORS, LLC<br>2821 CENTRAL RD.<br>MUSKEGON, MI 49445 | | MCCORMICK SAND INC.<br>5430 RUSSELL RD.<br>TWIN LAKE, MI 49457 | |
|---|---|---|---|---|---|---|---|---|---|
| LINE | DESCRIPTION | UNIT | QUANTITY | UNIT PRICE | TOTAL PRICE | UNIT PRICE | TOTAL PRICE | UNIT PRICE | TOTAL PRICE |
| 1 | Mobilization, Max__$26300 | LS | 1 | $13,200.00 | $ 13,200.00 | $ 13,017.70 | $ 13,017.70 | $ 5,005.99 | $ 5,005.99 |
| 2 | Tree, Rem, 19 inch to 36 inch | Ea | 1 | $900.00 | $ 900.00 | $ 1,500.00 | $ 1,500.00 | $ 1,200.00 | $ 1,200.00 |
| 3 | Sewer, Rem, Less than 24 inch | Ft | 204 | $2.00 | $ 408.00 | $ 7.75 | $ 1,581.00 | $ 8.00 | $ 1,632.00 |
| 4 | Dr Structure, Rem, Modified | Ea | 11 | $250.00 | $ 2,750.00 | $ 290.00 | $ 3,190.00 | $ 275.00 | $ 3,025.00 |
| 5 | Sidewalk, Rem | Syd | 240 | $5.00 | $ 1,200.00 | $ 8.00 | $ 1,920.00 | $ 9.00 | $ 2,160.00 |
| 6 | Pavt, Rem, Modified | Syd | 3902 | $4.00 | $ 15,608.00 | $ 4.00 | $ 15,608.00 | $ 3.00 | $ 11,706.00 |
| 7 | Machine Grading, Modified | Sta | 9 | $1,200.00 | $ 10,800.00 | $ 1,175.00 | $ 10,575.00 | $ 1,000.00 | $ 9,000.00 |
| 8 | Erosion Control, Inlet Protection, Fabric Drop | Ea | 8 | $100.00 | $ 800.00 | $ 90.00 | $ 720.00 | $ 50.00 | $ 400.00 |
| 9 | Aggregate Base, 8 inch | Syd | 3418 | $6.00 | $ 20,508.00 | $ 5.75 | $ 19,653.50 | $ 5.00 | $ 17,090.00 |
| 10 | Maintenance Gravel, LM | Cyd | 100 | $20.00 | $ 2,000.00 | $ 20.00 | $ 2,000.00 | $ 30.00 | $ 3,000.00 |
| 11 | Sewer, Cl E, 12 inch, Tr Det B | Ft | 203 | $22.00 | $ 4,466.00 | $ 30.00 | $ 6,090.00 | $ 28.00 | $ 5,684.00 |
| 12 | Sewer, Cl A, 18 inch, Tr Det B | Ft | 20 | $30.00 | $ 600.00 | $ 80.00 | $ 1,600.00 | $ 43.00 | $ 860.00 |
| 13 | Sewer Tap, 8 inch, modified | Ea | 2 | $150.00 | $ 300.00 | $ 600.00 | $ 1,200.00 | $ 160.00 | $ 320.00 |
| 14 | Sewer Tap, 12 inch, modified | Ea | 1 | $300.00 | $ 300.00 | $ 600.00 | $ 600.00 | $ 170.00 | $ 170.00 |
| 15 | Sewer Tap, 18 inch, modified | Ea | 1 | $400.00 | $ 400.00 | $ 1,000.00 | $ 1,000.00 | $ 190.00 | $ 190.00 |
| 16 | Sanitary Sewer, PVC SDR 35, 6 inch, Tr Det B | Ft | 83 | $28.00 | $ 2,324.00 | $ 36.00 | $ 2,988.00 | $ 23.00 | $ 1,909.00 |
| 17 | Sanitary Sewer, PVC SDR 35, 8 inch, Tr Det B | Ft | 646 | $32.00 | $ 20,672.00 | $ 25.00 | $ 16,150.00 | $ 18.00 | $ 11,628.00 |
| 18 | Sanitary Sewer, PVC SDR 35, 12 inch, Tr Det B | Ft | 20 | $40.00 | $ 800.00 | $ 30.00 | $ 600.00 | $ 25.00 | $ 500.00 |
| 19 | Sanitary Sewer, Wye, PVC SDR 35, 8"x 6" | Ea | 6 | $200.00 | $ 1,200.00 | $ 200.00 | $ 1,200.00 | $ 110.00 | $ 660.00 |
| 20 | Dr Structure Cover, Adj, Case 1, Modified | Ea | 10 | $550.00 | $ 5,500.00 | $ 400.00 | $ 4,000.00 | $ 350.00 | $ 3,500.00 |
| 21 | Dr Structure, Adj, Add Depth | Ft | 8 | $200.00 | $ 1,600.00 | $ 180.00 | $ 1,440.00 | $ 250.00 | $ 2,000.00 |
| 22 | Dr Structure, Tap, 8 inch | Ea | 3 | $125.00 | $ 375.00 | $ 600.00 | $ 1,800.00 | $ 120.00 | $ 360.00 |
| 23 | Dr Structure, Tap, 12 inch | Ea | 6 | $140.00 | $ 840.00 | $ 600.00 | $ 3,600.00 | $ 150.00 | $ 900.00 |
| 24 | Dr Structure Cover, Modified | Lbs | 9030 | $1.00 | $ 9,030.00 | $ 1.00 | $ 9,030.00 | $ 1.35 | $ 12,190.50 |
| 25 | Catch Basin Special Detail | Ea | 8 | $1,350.00 | $ 10,800.00 | $ 1,075.00 | $ 8,600.00 | $ 1,000.00 | $ 8,000.00 |
| 26 | Manhole, Special Detail | Ea | 4 | $1,200.00 | $ 4,800.00 | $ 1,500.00 | $ 6,000.00 | $ 1,800.00 | $ 7,200.00 |
| 27 | HMA, 3C | Ton | 409 | $65.00 | $ 26,585.00 | $ 60.00 | $ 24,540.00 | $ 57.10 | $ 23,353.90 |
| 28 | HMA, 5E3 | Ton | 409 | $65.00 | $ 26,585.00 | $ 80.00 | $ 32,720.00 | $ 74.54 | $ 30,486.86 |
| 29 | Driveway, Nonreinf Conc, 6 Inch, Modified | Syd | 497 | $33.00 | $ 16,401.00 | $ 28.50 | $ 14,164.50 | $ 28.00 | $ 13,916.00 |
| 30 | Curb and Gutter, Conc, Det F4 | Ft | 1917 | $14.00 | $ 26,838.00 | $ 10.50 | $ 20,128.50 | $ 10.00 | $ 19,170.00 |
| 31 | Detectable Warning Surface | Ft | 116 | $10.00 | $ 1,160.00 | $ 37.00 | $ 4,292.00 | $ 32.00 | $ 3,712.00 |
| 32 | Sidewalk Ramp, Conc, 4 inch | Sft | 610 | $6.00 | $ 3,660.00 | $ 4.65 | $ 2,836.50 | $ 4.75 | $ 2,897.50 |
| 33 | Sidewalk, Conc, 4 inch | Sft | 1175 | $3.00 | $ 3,525.00 | $ 3.10 | $ 3,642.50 | $ 3.00 | $ 3,525.00 |
| 34 | Sidewalk, Conc, 6 inch | Sft | 95 | $4.00 | $ 380.00 | $ 3.25 | $ 308.75 | $ 3.50 | $ 332.50 |
| 35 | Pavt Mrkg, Ovly Cold Plastic, 6 inch, Crosswalk | Ft | 505 | $2.00 | $ 1,010.00 | $ 3.30 | $ 1,666.50 | $ 3.00 | $ 1,515.00 |
| 36 | Pavt Mrkg, Ovly Cold Plastic, 18 inch, Stop Bar | Ft | 84 | $6.00 | $ 504.00 | $ 9.90 | $ 831.60 | $ 5.00 | $ 420.00 |
| 37 | Pavt Mrkg, Waterborne, 4 inch, Yellow | Ft | 415 | $0.80 | $ 332.00 | $ 1.05 | $ 435.75 | $ 1.00 | $ 415.00 |
| 38 | Barricade, Type III, High Intensity, Lighted, Furn | Ea | 10 | $17.00 | $ 170.00 | $ 66.00 | $ 660.00 | $ 55.00 | $ 550.00 |
| 39 | Barricade, Type III, High Intensity, Lighted, Oper | Ea | 10 | $3.00 | $ 30.00 | $ 1.25 | $ 12.50 | $ 1.00 | $ 10.00 |
| 40 | Minor Traf Devices | LS | 1 | $500.00 | $ 500.00 | $ 880.00 | $ 880.00 | $ 975.00 | $ 975.00 |
| 41 | Plastic Drum, High Intensity, Furn | Ea | 40 | $17.00 | $ 680.00 | $ 11.00 | $ 440.00 | $ 12.25 | $ 490.00 |
| 42 | Plastic Drum, High Intensity, Oper | Ea | 40 | $3.00 | $ 120.00 | $ 1.25 | $ 50.00 | $ 0.75 | $ 30.00 |
| 43 | Sign, Type B, Temp, Furn | Sft | 365 | $1.00 | $ 365.00 | $ 2.75 | $ 1,003.75 | $ 2.75 | $ 1,003.75 |
| 44 | Sign, Type B, Temp, Oper | Sft | 365 | $3.00 | $ 1,095.00 | $ 1.25 | $ 456.25 | $ 1.00 | $ 365.00 |
| 45 | Topsoil Surface, Furn, 4 inch | Syd | 299 | $3.50 | $ 1,046.50 | $ 6.75 | $ 2,018.25 | $ 8.00 | $ 2,392.00 |
| 46 | Hydroseeding | Syd | 299 | $1.00 | $ 299.00 | $ 0.55 | $ 164.45 | $ 3.00 | $ 897.00 |
| 47 | Watermain, DI, 6 Inch, Tr Det G, Modified | Ft | 25 | $40.00 | $ 1,000.00 | $ 55.00 | $ 1,375.00 | $ 60.00 | $ 1,500.00 |
| 48 | Water Service, 1 inch, Copper Type K | Ft | 380 | $25.00 | $ 9,500.00 | $ 19.00 | $ 7,220.00 | $ 14.00 | $ 5,320.00 |
| 49 | Corporation Stop, 1 inch | Ea | 9 | $250.00 | $ 2,250.00 | $ 300.00 | $ 2,700.00 | $ 240.00 | $ 2,160.00 |
| 50 | Curb Stop and Box, 1 inch | Ea | 8 | $250.00 | $ 2,000.00 | $ 400.00 | $ 3,200.00 | $ 385.00 | $ 3,080.00 |
| 51 | Hydrant, Standard, 6 inch | Ea | 1 | $2,220.00 | $ 2,220.00 | $ 1,500.00 | $ 1,500.00 | $ 2,200.00 | $ 2,200.00 |
| 52 | Sleeve, 6 inch, Long, DI, MJ | Ea | 1 | $350.00 | $ 350.00 | $ 400.00 | $ 400.00 | $ 1,000.00 | $ 1,000.00 |
| 53 | Valve, 6 inch, Gate with Box | Ea | 1 | $600.00 | $ 600.00 | $ 800.00 | $ 800.00 | $ 1,200.00 | $ 1,200.00 |
| 54 | Water Valve Box and Cover, Complete | Ea | 6 | $350.00 | $ 2,100.00 | $ 240.00 | $ 1,440.00 | $ 450.00 | $ 2,700.00 |
| 55 | Meter Pit Complete | Ea | 1 | $750.00 | $ 750.00 | $ 950.00 | $ 950.00 | $ 825.00 | $ 825.00 |
| | | | | | | | | | |
| | TOTAL | | | | $ 264,236.50 | | $ 266,500.00 | | $ 236,732.00 |

Date: July 9, 2013

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Intergovernmental Agreement for Traffic Signal Maintenance

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## SUMMARY OF REQUEST:

Endorse the Muskegon County Road Commission (MCRC) selection of Windemuller Electric for the county-wide traffic signal maintenance thru 2016. Windemuller was selected via public bids received by MCRC, see attached bid tabulation.

## FINANCIAL IMPACT:

Based on the historical data over the last four years, it is estimated that the cost will be about $40,000/year.

## BUDGET ACTION REQUIRED:

None.

## STAFF RECOMMENDATION:

Endorse the contract between MCRC & Windemuller Electric.

## COMMITTEE RECOMMENDATION:

# Muskegon County Road Commission
## BID OPENING
## TUESDAY, APRIL 16, 2013

**TRAFFIC SIGNAL MAINTENANCE**

| CONTRACTOR | AS READ | AS TABULATED |
|---|---|---|
| Windemuller Electric, Inc.<br>1176 Electric Avenue<br>Wayland, MI 49348 | Year 1 = $ 109,836.00<br>Year 2 = 114,179.44<br>Year 3 = 114,179.44<br>**TOTAL** $ 338,194.88 | Year 1 = $ 109,836.00<br>Year 2 = 114,179.44<br>Year 3 = 114,179.44<br>**TOTAL** $ 338,194.88<br>ej |
| J. Ranck Electric, Inc.<br>1993 Gover Parkway<br>Mt. Pleasant, MI 48858 | Year 1 = $ 159,120.00<br>Year 2 = 163,893.60<br>Year 3 = 168,806.16<br>**TOTAL** $ 491,819.76 | Year 1 = $ 159,120.00<br>Year 2 = 163,893.60<br>Year 3 = 168,806.16<br>**TOTAL** $ 491,819.76<br>ej |
| | | |
| | | |
| | | |

Commission Meeting Date: July 9, 2013

Date: July 3, 2013

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Public Hearing - Request for an Industrial Facilities Exemption Certificate – Northern Machine Tool.

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SUMMARY OF REQUEST:

Pursuant to Public Act 198 of 1974, as amended, Northern Machine Tool, 761 Alberta Ave, has requested the issuance of an Industrial Facilities Exemption Certificate. The total capital investment is $1,150,000, which includes new personal property and real property improvements. This request qualifies the company for a term of six (6) years for personal property and twelve (12) years for real property.

FINANCIAL IMPACT:

The City will capture certain additional property taxes generated by the expansion (see attached Summary Sheet).

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the attached resolution granting an Industrial Facilities Exemption Certificate

COMMITTEE RECOMMENDATION:

None

Resolution No. _______

**MUSKEGON CITY COMMISSION**

RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE
***Northern Machine Tool Company.***

WHEREAS, pursuant to P.A. 198 of 1974 as amended, after duly noticed public hearing held on July 13, 2004, this Commission by resolution established an Industrial Development District as requested by Northern Machine Tool for the property at Alberta Ave, Muskegon, Michigan 49441; and

WHEREAS, Northern Machine Tool has filed an application for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to a building improvements and new machinery and equipment to be installed within said Industrial Development District ; and

WHEREAS, before acting on said application the Muskegon City Commission held a public hearing on September 13, 2011, at the Muskegon City Hall in Muskegon, Michigan at 5:30 p.m. at which hearing the applicant, the assessor and representatives of the affected taxing units were given written notice and were afforded an opportunity to be heard on said application; and

WHEREAS, the installation of machinery and equipment is calculated to and will have the reasonable likelihood to retain, create, or prevent the loss of employment in Muskegon, Michigan; and

WHEREAS, the aggregate SEV of real property exempt from ad valorem taxes within the City of Muskegon, will not exceed 5% of an amount equal to the sum of the SEV of the unit, plus the SEV of personal and real property thus exempted.

NOW, THEREFORE, BE IT RESOLVED by the Muskegon City Commission of the City of Muskegon, Michigan that:

1) The Muskegon City Commission finds and determines that the Certificate considered together with the aggregate amount of certificates previously granted and currently in force under Act No. 198 of the Public Act of 1974 as amended and Act No. 255 of the Public Acts of 1978 as amended shall not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of a taxing unit which levies ad valorem property taxes in the City of Muskegon.

2) The application of Northern Machine Tool, for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to the building expansion and installation of new machinery and equipment on the following described parcel of real property situated within the City of Muskegon to wit:

   *CITY OF MUSKEGON GREGORY ADDITION LOTS 32-37 INCL LOTS 41-46 INCL & ADJ VAC ALLEY ALSO N 153.12 FT OF S 178.87 FT OF W 209 FT OF NW FRL 1/4 OF SW 1/4 SEC 31 T10N R16 W W 33 FT USED FOR ST*

3) The Industrial Facilities Tax Exemption Certificate is issued and shall be and remain in force and effect for a period of six (6) years on personal property and twelve (12) years on real property.

Adopted this 9th Day of July 2013.

Ayes:

Nays:

Absent:

BY: ______________________________
Stephen Gawron, Mayor

ATTEST: ______________________________
Ann Cummings, City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on July 9, 2013.

______________________________
Ann Cummings, City Clerk

MUSKEGON

West Michigan's Shoreline City

# City of Muskegon
# Industrial Facilities Exemption Application
# Summary Sheet

**Project Summary:**

NORTHERN MACHINE TOOL COMPANY, an existing manufacturing company located at 761 Alberta Avenue, Muskegon, Michigan, has constructed an addition to their facility and has purchased new personal property. The company has invested $1,150,000 in real and personal property and is eligible for a six (6) year personal property abatement and a twelve (12) real property abatement.

**Employment Information:**

Racial Characteristics:

| | | |
|---|---|---|
| White | 28 | (85%) |
| Minority | 5 | (15%) |
| Total | 33 | |

Gender Characteristics:

| | | |
|---|---|---|
| Male | 30 | (91%) |
| Female | 3 | (9%) |
| Total | ~~27~~ 33 | |

**Investment Information:**

| | |
|---|---|
| Real Property: | $640,000 |
| Personal Property | $510,000 |
| Total: | $1,150,000 |

**Property Tax Information** (Annual)

| | All Jurisdictions | City Only |
|---|---|---|
| Total New Taxes Generated | $26,750 | $3,183 |
| Value of Abatement | $13,375 | $1,592 |
| Total New Taxes Collected | $13,37 | $1,592 |

**Income Tax Information**: (Annual)

Total Additional Income Tax Generated: $480

**Company Requirements:**

| | | |
|---|---|---|
| Adopted Affirmative Action Policy | ☒ Yes | ☐ No |
| Meeting w/ City Affirmative Action Director | ☒ Yes | ☐ No |
| Signed Tax Abatement Contract | ☒ Yes | ☐ No |
| Taxes Paid In Full | ☒ Yes | ☐ No |
| Zoning Conflicts | ☐ Yes | ☒ No |

Mike Franzak
Planner III

Dwana Thompson
Dwana Thompson
Affirmative Action Director

Date: July 9, 2013

To: Honorable Mayor and City Commissioners

From: City Manager

RE: CATV Franchise Agreement

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SUMMARY OF REQUEST: The City's 25-year cable TV franchise agreement with Comcast expires August 2, 2013. Legislation adopted in 2007 generally takes franchise negotiations out of local community's control and, instead, requires the use of a "Uniform Video Local Franchise Agreement." Comcast recently (June 20$^{th}$) submitted a Uniform Franchise Agreement for the City's consideration. The City has 15 business days to respond as to the completeness of Comcast's Uniform Franchise application and 30 business days in which to approve the application.

The City of Detroit previously challenged the Uniform Franchise in federal court and that court has generally found in favor of Detroit. However, final resolution of the Detroit case is several months away.

Our legal counsel on this matter advises that it is in the City of Muskegon's interest to: 1) deny the Uniform Franchise as initially submitted by Comcast and delegate authority to negotiate with Comcast to the city manager by adoption of the attached resolution and, 2) send the attached reply letter to Comcast.

FINANCIAL IMPACT: There is no immediate budgetary impact. The franchise fee received by the City remains at 5%. Depending on the final outcome of negotiations with Comcast and/or the Detroit litigation, the City may receive additional benefits from the franchise renewal.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Adoption of the attached delegation resolution.

COMMITTEE RECOMMENDATION: None

**RESOLUTION**

**WHEREAS**, Public Act 480 of 2006 (the Uniform Video Services Local Franchise Act, hereafter the "Act") requires video service providers to obtain a franchise from a municipality by means of a Uniform Video Service Local Franchise Agreement ("Uniform Franchise"); and

**WHEREAS**, the Michigan Public Service Commission ("MPSC") on January 30, 2007 issued an order ("Order") that provided a Uniform Franchise form; and

**WHEREAS**, the Act provides the City of Muskegon (the "Municipality") fifteen (15) business days from the date an application for a Uniform Franchise is filed with the Municipality to respond as to the completeness of the Uniform Franchise; and

**WHEREAS**, the Act provides the Municipality thirty (30) days from the submission date of a complete application for a Uniform Franchise in which to act to approve the Uniform Franchise; and

**WHEREAS**, the Municipality wishes to memorialize that on the effective date of the Act, January 1, 2007, Comcast was the incumbent video provider in the Municipality with the largest number of subscribers; and

**WHEREAS**, the Municipality wishes to memorialize the number of public, educational and governmental access ("PEG") channels in actual use on the incumbent video provider's system in the Municipality on the effective date of the Act, January 1, 2007; and

**WHEREAS**, the Municipality also wishes to memorialize the franchise fees being paid by the incumbent provider under its existing franchise agreement on the effective date of the Act; and

**WHEREAS**, the Municipality has determined that it must designate an official to whom it delegates the authority to respond to, complete, sign and approve Uniform Franchise applications in order to meet the deadlines under the Act, including establishing the video service provider franchise fees and fees to support PEG facilities and services provided for in Uniform Franchises, and taking all actions related thereto; and

**WHEREAS**, the Municipality desires to provide such official with guidance on such fees; and

**WHEREAS**, the Municipality does not intend that by approving a Uniform Franchise that it shall be waiving rights, nor does it understand that the Act or the MPSC Order so requires; and

**WHEREAS**, the State of Michigan has determined that a municipality may, in compliance with the Act, deny a Uniform Franchise application and the federal courts have agreed.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that it is hereby memorialized that, on January 1, 2007, the effective date of the Act, Comcast was the incumbent video provider with the largest number of subscribers in Municipality, and that under its existing franchise agreement with Municipality, Comcast was paying Municipality a franchise fee of fiver percent (5%) of gross revenues, as determined by such existing franchise agreement; and

**BE IT FURTHER RESOLVED** that it is hereby memorialized that there were two public, educational and governmental access channels in actual use on the incumbent video provider's system in the Municipality on the effective date of the Act, January 1, 2007; and

**BE IT FURTHER RESOLVED** that a fee of five percent (5%) of gross revenues from video service providers is hereby established as the annual video service provider franchise fee, which is also the fee paid to the Municipality by Comcast under its existing cable franchise with Municipality; and

**BE IT FURTHER RESOLVED** that the Municipality designates and delegates to the Manager, with the restrictions set forth herein, full authority to respond to and to complete and approve or else to deny a Uniform Franchise application, and to carry out negotiations with video service providers to accomplish any necessary modifications to a proposed Uniform Franchise necessary to meet local needs, and to take all such other actions related thereto as are necessary; and

**BE IT FURTHER RESOLVED** that such authority includes the Manager having the authority to determine within the statutory deadlines whether the Uniform Franchise application as submitted is complete, and having the authority to sign it indicating approval of the Municipality or else to deny it on behalf of the Municipality; and

**BE IT FURTHER RESOLVED** that the Manager, Clerk, City Attorney, Municipality's Special Counsel and other of Municipality's officials are hereby authorized and directed to take all actions necessary to place a Uniform Franchise into effect in accordance with this resolution; and

**BE IT FURTHER RESOLVED** that no response, completion, approvals, deemed approvals under the Act or signature of the Manager on a Uniform Franchise shall be construed or understood to be a waiver by the Municipality of its police powers; rights it may possess under the Act, Michigan law, the Michigan Constitution, federal law (including the right to pursue the renewal process in accordance with Section 626 of the Federal Cable Act), or court decisions regarding the Act; or right to challenge or modify a Uniform Franchise if the Act in whole or in part is amended by the legislature or overturned by the courts; and

**BE IT FINALLY RESOLVED** that all resolutions in conflict with this resolution are hereby superseded and replaced by this resolution.

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor
(231)724-6708
FAX (231)726-5181

Cemetery
(231)724-6783
FAX (231)726-5617

City Manager
(231)724-6724
FAX (231)722-1214

Civil Service
(231)724-6716
FAX (231)724-4405

Clerk
(231)724-6705
FAX (231)724-4178

Comm. & Neigh. Services
(231)724-6717
FAX (231)726-2501

Engineering
(231)724-6707
FAX (231)727-6904

Finance
(231)724-6713
FAX (231)724-6768

Fire Department
(231)724-6792
FAX (231)724-6985

Income Tax
(231)724-6770
FAX (231)724-6768

Info. Technology
(231)724-4126
FAX (231)722-4301

Inspection Services
(231)724-6715
FAX (231)728-4371

Leisure Services
(231)724-6704
FAX (231)724-1196

Mayor's Office
(231)724-6701
FAX (231)722-1214

Planning/Zoning
(231)724-6702
FAX (231)724-6790

Police Department
(231)724-6750
FAX (231)722-5140

Public Works
(231)724-4100
FAX (231)722-4188

Treasurer
(231)724-6720
FAX (231)724-6768

Water Billing
(231)724-6718
FAX (231)724-6768

Water Filtration
(231)724-4106
FAX (231)755-5290

MUSKEGON
West Michigan's Shoreline City
www.shorelinecity.com

July 10, 2013

John P. Gardner
Sr. Government Affairs Manager
Comcast, Heartland Region
1401 E. Miller Rd.
Lansing, MI 48911

RE: Michigan Uniform Video Service Local Franchise Agreement

Dear Mr. Gardner,

We have received the Uniform Video Service Local Franchise Agreement ("Uniform Franchise") application you submitted on behalf of Comcast of Muskegon ("Comcast"). We appreciate Comcast's continued commitment to serving its customers in the City. However, we have determined that the application as submitted is incomplete, and that it should be denied for the reasons stated below.[1] We invite you to meet with us to discuss the items below and then to re-submit a Uniform Franchise application that addresses these issues.

First, while the City has no objection to the use of the Uniform Franchise as the base document, we would like to see a few relatively minor amendments made to it to address local needs. These items of local concern are as follows:

- Connections to City facilities,
- Extension of the system to the marina.

As noted in the "Instructions" accompanying the application you submitted, amendments to the Uniform Franchise such as these may be accomplished via an "Attachment 2" that the provider should complete and submit. Such local variations in the Uniform Franchise are, as you know, envisioned in Section 13 of P.A. 480 of 2006 and are also an important part of the Federal Cable Act's renewal process. It is our belief that these items of local concern can be easily addressed in a couple brief provisions that would be attached via an Attachment 2 to an approved Uniform Franchise. We encourage you to contact us at your earliest

[1] We note that the State of Michigan has determined that a city may, in compliance with State law, deny a Uniform Franchise Application, and the federal courts have affirmed this position. *City of Detroit v. Michigan and Comcast of Detroit*, 879 F. Supp. 2d 680, 697-698 (E.D. Mich., 2012).

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convenience to set up a meeting at which we can discuss these items and work out some mutually agreeable language to address them.

In a second, and admittedly lesser concern, the City notes that Comcast has completed the blanks in Section VIII of the Uniform Franchise application it submitted. This is a violation of the MPSC's May 3, 2007 Order in case no. U-15281, which affirms that "[t]he Commission's January 30, 2007 order in Case No. U-15169 provides that it is the responsibility of the franchising entity to fill in the applicable franchise fee or PEG fee in a franchise agreement. Similarly, Section VIII(A)(1)-(3) of the Commission's January 30, 2007 order require that the franchising entity enter the applicable PEG fee amount paid to the incumbent provider." Order in U-15281, p. 3. We would therefore encourage you, when you re-submit your Uniform Franchise application with appropriate amendments, to leave the franchise fee and PEG fee amounts blank in compliance with MPSC requirements.

We look forward to speaking with you soon about amendatory language to your franchise application.

Very truly yours,

Bryon L. Mazade
City Manager

cc: John W. Pestle and Tim Lundgren, Varnum, LLP

**City of Muskegon, 933 Terrace Street, P.O. Box 536, Muskegon, MI 49443-0536**
**http://www.shorelinecity.com**

COMCAST



***Sent via Certified Mail/Return Receipt***

June 20, 2013

Ms. Ann Cummings, Clerk
City of Muskegon
933 Terrace St.
P.O. Box 536
Muskegon, MI 49443

**Re: Michigan Uniform Video Service Local Franchise Agreement**

Dear Ms. Cummings:

In accordance with the instructions set forth by the Michigan Public Service Commission in its provision of the Uniform Video Service Local Franchise Agreement, enclosed please find a completed Uniform Video Service Local Franchise Agreement along with the necessary Attachment 1 thereto filed on behalf of Comcast of Muskegon. Kindly return the executed copy of the Agreement in the self addressed stamped envelope.

If you have any questions, please contact me directly at 517-334-5686 or Leslie Brogan, Senior Director of Government Affairs, at 517-334-5890. We look forward to continuing to be the company that your residents look to first for the communication products and services that connect them to what's important in their lives.

Sincerely,

John P. Gardner

John P. Gardner
Senior Government Affairs Manager
Comcast, Heartland Region
1401 E. Miller Rd.
Lansing, MI 48911

Enclosure

Cc: Leslie A. Brogan, Comcast

# INSTRUCTIONS FOR
# UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

Pursuant to 2006 Public Act 480, MCL 484.3301 *et seq*, any Video Service Provider seeking to provide video service in one or more service areas in the state of Michigan after January 30, 2007, shall file an application for a Uniform Video Service Local Franchise Agreement with the Local Unit of Government ("Franchising Entity") that the Provider wishes to service. Pursuant to Section 2(2) of 2006 PA 480, "Except as otherwise provided by this Act, a person shall not provide video services in any local unit of government without first obtaining a uniform video service local franchise as provided under Section 3." Procedures applicable to incumbent video service providers are set forth below.

As of the effective date (January 1, 2007) of the Act, no existing franchise agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the agreement. The incumbent video Provider, at its option, may continue to provide video services to the Franchising Entity by electing to do one of the following:

1. Terminate the existing franchise agreement before the expiration date of the agreement and enter into a new franchise under a uniform video service local franchise agreement.

2. Continue under the existing franchise agreement amended to include only those provisions required under a uniform video service local franchise.

3. Continue to operate under the terms of an expired franchise until a uniform video service local franchise agreement takes effect. An incumbent video Provider with an expired franchise on the effective date has <u>120</u> days after the effective date of the Act to file for a uniform video service local franchise agreement.

On the effective date (January 1, 2007) of the Act, any provisions of an existing Franchise that are inconsistent with or in addition to the provisions of a uniform video service local Franchise Agreement are unreasonable and unenforceable by the Franchising Entity.

If, at a subsequent date, the Provider would like to provide video service to an additional Local Unit of Government, the Provider must file an additional application with that Local Unit of Government.

## <u>The forms shall meet the following requirements:</u>

- The Provider must complete both the "<u>Uniform Video Service Local Franchise Agreement</u>" and "<u>Attachment 1 - Uniform Video Service Local Franchise Agreement</u>" forms if they are seeking a new/renewed Franchise Agreement, and send the forms by mail (certified, registered, first-class, return receipt requested, or by a nationally recognized overnight delivery service) to the appropriate Franchising Entity. Until otherwise officially notified by the Franchising Entity, the forms shall be sent to the Clerk or any official with the responsibilities or functions of the Clerk in the Franchising Entity. **"<u>Attachment 2 - Uniform Video Service Local Franchise Agreement</u>" is not required to be filed at this time *unless* it is being used regarding amendments, terminations, or transfers pertaining to an <u>existing</u> Uniform Video Service Local Franchise Agreement. (Refer to Sections X to XII of the Agreement, as well as Section 3(4-6) of the Act.)**

- Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and MUST BE KEPT CONFIDENTIAL.

    1. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

        "[insert PROVIDER'S NAME]
        [CONFIDENTIAL INFORMATION]"

    2. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a

FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.

3. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

- Responses to all questions must be provided and must be amended appropriately when changes occur.

- All responses must be printed out, typed, signed/dated (where appropriate), and mailed (certified, registered, first class, return receipt requested, or by a national recognized overnight delivery service) to the appropriate party.

- The Agreement and Attachments are templates. Tab through the documents and fill in as appropriate, use the appropriate "dropdown box" (City/Village/Township) when indicated.

- For sections that need explanation, if the Provider runs out of space, the Provider should then submit the application with typed attachments that are clearly identified.

- The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by this Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the franchise agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."

- A Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and the Franchise Agreement approved. The Provider shall notify both the Franchising Entity and the Michigan Public Service Commission of such an approved and completed Agreement by completing **Attachment 3 - Uniform Video Service Local Franchise Agreement**.

- For changes to an existing Uniform Video Service Local Franchise Agreement (amendments, transfers, or terminations), the Provider must complete the "**Attachment 2 - Uniform Video Service Local Franchising Entity**" form, and send the form to the appropriate Franchising Entity.

- For information that is to be submitted to the Michigan Public Service Commission, please use the following address:

Michigan Public Service Commission
Attn: Video Franchising
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Fax: (517) 241-6217

Questions should be directed to the Telecommunications Division, Michigan Public Service Commission at (517) 241-6200.

# UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

THIS UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is made, pursuant to 2006 PA 480, MCL 484.3301 *et seq*, (the "Act") by and between City of Muskegon, a Michigan municipal corporation (the "Franchising Entity"), and Comcast of Muskegon, a Michigan General Partnership doing business as Comcast.

**I. <u>Definitions</u>**

For purposes of this Agreement, the following terms shall have the following meanings as defined in the Act:

- **A.** "<u>Cable Operator</u>" means that terms as defined in 47 USC 522(5).
- **B.** "<u>Cable Service</u>" means that terms as defined in 47 USC 522(6).
- **C.** "<u>Cable System</u>" means that term as defined in 47 USC 522(7).
- **D.** "<u>Commission</u>" means the Michigan Public Service Commission.
- **E.** "<u>Franchising Entity</u>" means the local unit of government in which a provider offers video services through a franchise.
- **F.** "<u>FCC</u>" means the Federal Communications Commission.
- **G.** "<u>Gross Revenue</u>" means that term as described in Section 6(4) of the Act and in Section VI(D) of the Agreement.
- **H.** "<u>Household</u>" means a house, an apartment, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.
- **I.** "<u>Incumbent video provider</u>" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider's existing telephone exchange boundaries in a particular franchise area within a local unit of government on the effective date of this act.
- **J.** "<u>IPTV</u>" means internet protocol television.
- **K.** "<u>Local unit of government</u>" means a city, village, or township.
- **L.** "<u>Low-income household</u>" means a household with an average annual household income of less than $35,000.00 as determined by the most recent decennial census.
- **M.** "<u>METRO Act</u>" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 *et seq*.
- **N.** "<u>Open video system</u>" or "<u>OVS</u>" means that term as defined in 47 USC 573.
- **O.** "<u>Person</u>" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
- **P.** "<u>Public rights-of-way</u>" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
- **Q.** "<u>Term</u>" means the period of time provided for in Section V of this Agreement.
- **R.** "<u>Uniform video service local franchise agreement</u>" or "<u>franchise agreement</u>" means the franchise agreement required under the Act to be the operating agreement between each franchising entity and video provider in this state.
- **S.** "<u>Video programming</u>" means that term as defined in 47 USC 522(20).
- **T.** "<u>Video service</u>" means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.
- **U.** "<u>Video service provider</u>" or "<u>Provider</u>" means a person authorized under the Act to provide video service.
- **V.** "<u>Video service provider fee</u>" means the amount paid by a video service provider or incumbent video provider under Section 6 of the Act and Section VI of this Agreement.

## II. <u>Requirements of the Provider</u>

- **A.** An unfranchised Provider will not provide video services in any local unit of government without first obtaining a uniform video service local franchise agreement as provided under **Section 3 of the Act** (except as otherwise provided by the Act).
- **B.** The Provider shall file in a timely manner with the Federal Communications Commission all forms required by that agency in advance of offering video service in Michigan.
- **C.** The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.
- **D.** The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity.
- **E.** The Provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of federal, state, and local emergency messages over the emergency alert system applicable to cable operators.
- **F.** The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.
- **G.** The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
  - i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918.
- **H.** The Provider agrees to comply with in-home wiring and consumer premises wiring rules of the Federal Communications Commission applicable to cable operators.
- **I.** The Provider shall comply with the Consumer Privacy Requirements of 47 USC 551 applicable to cable operators.
- **J.** If the Provider is an incumbent video provider, it shall comply with the terms which provide insurance for right-of-way related activities that are contained in its last cable franchise or consent agreement from the Franchising Entity entered before the effective date of the Act.
- **K.** The Provider agrees that before offering video services within the boundaries of a local unit of government, the video Provider shall enter into a Franchise Agreement with the local unit of government as required by the Act.
- **L.** The Provider understands that as the effective date of the Act, no existing Franchise Agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the Agreement.
- **M.** The Provider provides an exact description of the video service area footprint to be served, pursuant to **Section 2(3)(e) of the Act**. If the Provider is not an incumbent video Provider, the date on which the Provider expects to provide video services in the area identified under **Section 2(3)(e) of the Act** must be noted. The Provider will provide this information in <u>Attachment 1</u> - Uniform Video Service Local Franchise Agreement.
- **N.** The Provider is required to pay the Provider fees pursuant to **Section 6 of the Act**.

## III. <u>Provider Providing Access</u>

- **A.** The Provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- **B.** It is a defense to an alleged violation of Paragraph A if the Provider has met either of the following conditions:
  - i. Within <u>3 years</u> of the date it began providing video service under the Act and the Agreement; at least <u>25%</u> of households with access to the Provider's video service are low-income households.
  - ii. Within <u>5 years</u> of the date it began providing video service under the Act and Agreement and from that point forward, at least <u>30%</u> of the households with access to the Provider's video service are low-income households.
- **C.** [**If the Provider is using telecommunication facilities**] to provide video services and has more than 1,000,000 telecommunication access lines in Michigan, the Provider shall provide access to its video service to a number of households equal to at least <u>25%</u> of the households in the provider's telecommunication

service area in Michigan within 3 years of the date it began providing video service under the Act and Agreement and to a number not less than 50% of these households within 6 years. **The video service Provider is not required to meet the 50% requirement in this paragraph until 2 years after at least 30% of the households with access to the Provider's video service subscribe to the service for 6 consecutive months.**

**D.** The Provider may apply to the Franchising Entity, and in the case of paragraph C, the Commission, for a waiver of or for an extension of time to meet the requirements of this section if 1 or more of the following apply:
   i. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
   ii. Developments or buildings not being subject to competition because of existing exclusive service arrangements.
   iii. Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
   iv. Natural disasters
   v. Factors beyond the control of the Provider

**E.** The Franchising Entity or Commission may grant the waiver or extension only if the Provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the Franchising Entity or Commission shall establish a new compliance deadline. If a waiver is granted, the Franchising Entity or Commission shall specify the requirement or requirements waived.

**F.** The Provider shall file an annual report with the Franchising Entity and the Commission regarding the progress that has been made toward compliance with paragraphs B and C.

**G.** Except for satellite service, the provider may satisfy the requirements of this paragraph and Section 9 of the Act through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider's video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under Paragraph II(E) of this Agreement.

## IV. Responsibility of the Franchising Entity

**A.** The Franchising Entity hereby grants authority to the Provider to provide Video Service in the Video Service area footprint, as described in this Agreement and Attachments, as well as the Act.

**B.** The Franchising Entity hereby grants authority to the Provider to use and occupy the Public Rights-of-way in the delivery of Video Service, subject to the laws of the state of Michigan and the police powers of the Franchising Entity.

**C.** The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by the Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the Franchise Agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."

**D.** The Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under **Section 3(3) of the Act**, the Franchise Agreement shall be considered complete and the Franchise Agreement approved.
   i. If time has expired for the Franchising Entity to notify the Provider, The Provider shall send (via mail: certified or registered, or by fax) notice to the Franchising Entity and the Commission, using Attachment 3 of this Agreement.

**E.** The Franchising Entity shall allow a Provider to install, construct, and maintain a video service or communications network within a public right-of-way and shall provide the provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

**F.** The Franchising Entity may not discriminate against a video service provider to provide video service for any of the following:
   i. The authorization or placement of a video service or communications network in public right-of-way.
   ii. Access to a building owned by a governmental entity.
   iii. A municipal utility pole attachment.

**G.** The Franchising Entity may impose on a Provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the Franchising Entity for issuing the relevant permit. A fee under this section shall not be levied if the Provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the Provider in the public right-of-way or for general revenue purposes.

**H.** The Franchising Entity shall not require the provider to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under the Act and this Agreement. For purposes of this Agreement, a franchise requirement includes but is not limited to, a provision regulating rates charged by video service providers, requiring the video service providers to satisfy any build-out requirements, or a requirement for the deployment of any facilities or equipment.

**I.** Notwithstanding any other provision of the Act, the Provider shall not be required to comply with, and the Franchising Entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by **Section 9 of the Act**.

**J.** The Franchising Entity is subject to the penalties provided for under Section 14 of the Act.

## V. Term

**A.** This Franchise Agreement shall be for a period of 10 years from the date it is issued. The date it is issued shall be calculated either by **(a)** the date the Franchising Entity approved the Agreement, provided it did so within 30 days after the submission of a complete franchise agreement, or **(b)** the date the Agreement is deemed approved pursuant to **Section 3(3) of the Act**, if the Franchising Entity either fails to notify the Provider regarding the completeness of the Agreement or approve the Agreement within the time periods required under that subsection.

**B.** Before the expiration of the initial Franchise Agreement or any subsequent renewals, the Provider may apply for an additional 10-year renewal under **Section 3(7) of the Act.**

## VI. Fees

**A.** A video service Provider shall calculate and pay an annual video service provider fee to the Franchising Entity. The fee shall be 1 of the following:

i. If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in the Franchising Entity.

ii. At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement, an amount equal to the percentage of gross revenue as established by the Franchising Entity of _______% (percentage amount to be inserted by Franchising Entity which shall not exceed 5%) and shall be applicable to all providers

**B.** The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.

**C.** The Franchising Entity shall not demand any additional fees or charges from a provider and shall not demand the use of any other calculation method other than allowed under the Act.

**D.** For purposes of this Section, "gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the provider from subscribers for the provision of video service by the video service provider within the jurisdiction of the franchising entity.

1. **Gross revenues shall include all of the following:**

i. All charges and fees paid by subscribers for the provision of video service, including equipment rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video service.

ii. Any franchise fee imposed on the Provider that is passed on to subscribers.

iii. Compensation received by the Provider for promotion or exhibition of any products or services over the video service.

iv. Revenue received by the Provider as compensation for carriage of video programming on that Provider's video service.

v. All revenue derived from compensation arrangements for advertising to the local franchise area.

vi. Any advertising commissions paid to an affiliated third party for video service advertising.

2. **Gross revenues do not include any of the following:**

i. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.

ii. Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subdivision (D)(i) and to the extent the refund, rebate, credit, or discount is attributable to the video service.

iii. Any revenues received by the Provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionality integrated, with video service.

iv. Any revenues received by the Provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.

v. Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.

vi. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes.

vii. Any forgone revenue from the provision of video service at no charge to any person, except that any forgone revenue exchanged for trades, barters, services, or other items of value shall be included in gross revenue.

viii. Sales of capital assets or surplus equipment.

ix. Reimbursement by programmers of marketing costs actually incurred by the Provider for the introduction of new programming.

x. The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to the service.

**E.** In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video Provider's revenue attributable to the other services, capabilities, or applications shall be included in gross revenue unless the Provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

**F.** Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate has the effect of evading the payment of franchise fees which would otherwise be paid for video service.

**G.** The Provider is entitled to a credit applied toward the fees due under **Section 6(1) of the Act** for all funds allocated to the Franchising Entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under **Section 8 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act)**, 2002 PA 48, MCL 484.3108. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the Franchising Entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the Provider in the public rights-of-way of the Franchising Entity by the lesser of 5 cents or the amount assessed under the **METRO Act**. The Provider is not eligible for a credit under this section unless the provider has taken all property tax credits allowed under the **METRO Act**.

**H.** All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.

**I.** Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within <u>3 years</u> from the date the compensation is remitted.

**J.** The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(1) of the Act**, applied against the amount of the subscriber's monthly bill.

**K.** The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

## VII. <u>Public, Education, and Government (PEG) Channels</u>

**A.** The video service Provider shall designate a sufficient amount of capacity on its network to provide for the same number of public, education, and government access channels that are in actual use on the incumbent video provider system on the **effective date of the Act** or as provided under **Section 4(14) of the Act**.

**B.** Any public, education, or government channel provided under this section that is not utilized by the Franchising Entity for at least 8 hours per day for 3 consecutive months may no longer be made available to the Franchising Entity and may be programmed at the Provider's discretion. At such a time as the Franchising Entity can certify a schedule for at least 8 hours of daily programming for a period of 3 consecutive months, the Provider shall restore the previously reallocated channel.

**C.** The Franchising Entity shall ensure that all transmissions, content, or programming to be retransmitted by a video service Provider is provided in a manner or form that is capable of being accepted and retransmitted by a Provider, without requirement for additional alteration or change in the content by the Provider, over the particular network of the Provider, which is compatible with the technology or protocol utilized by the Provider to deliver services.

**D.** The person producing the broadcast is solely responsible for all content provided over designated public, education, or government channels. The video service Provider *shall not* exercise any editorial control over any programming on any channel designed for public, education, or government use.

**E.** The video service Provider is not subject to any civil or criminal liability for any program carried on any channel designated for public, education, or government use.

**F.** If a Franchising Entity seeks to utilize capacity pursuant to **Section 4(1) of the Act** or an agreement under **Section 13 of the Act** to provide access to video programming over one or more PEG channels, the Franchising Entity shall give the Provider a written request specifying the number of channels in actual use on the incumbent video provider's system or specified in the agreement entered into under **Section 13 of the Act**. The video service Provider shall have 90 days to begin providing access as requested by the Franchising Entity. The number and designation of PEG access channels shall be set forth in an addendum to this agreement effective 90 days after the request is submitted by the Franchising Entity.

**G.** A PEG channel shall only be used for noncommercial purposes.

## VIII. PEG Fees

**A.** The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following options:

1. If there is an existing Franchise on the effective date of the Act, the fee (enter the fee amount _ 0_ ) paid to the Franchising Entity by the incumbent video Provider with the largest number of cable service subscribers in the Franchising Entity as determined by the existing Franchise Agreement;
2. At the expiration of the existing Franchise Agreement, the amount required under (1) above, which is __0__% of gross revenues. (The amount under (1) above is not to exceed 2% of gross revenues);
3. If there is no existing Franchise Agreement, a percentage of gross revenues as established by the Franchising Entity and to be determined by a community need assessment, is _------__% of gross revenues. (The percentage that is established by the Franchising Entity is not to exceed 2% of gross revenues.); and
4. An amount agreed to by the Franchising Entity and the video service Provider.

**B.** The fee required by this section shall be applicable to all providers, pursuant to Section 6(9) of the Act.

**C.** The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.

**D.** All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.

**E.** Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.

**F.** The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(8) of the Act**, applied against the amount of the subscriber's monthly bill.

**G.** The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

## IX. Audits

**A.** No more than every 24 months, a Franchising Entity may perform reasonable audits of the video service Provider's calculation of the fees paid under **Section 6 of the Act** to the Franchising Entity during the preceding 24-month period only. All records reasonably necessary for the audits shall be made available by the Provider at the location where the records are kept in the ordinary course of business. The Franchising Entity and the video service Provider shall each be responsible for their respective costs of the audit. Any additional amount due verified by the Franchising Entity shall be paid by the Provider within 30 days of the Franchising Entity's submission of invoice for the sum. If the sum exceeds 5% of the total fees which the audit determines should have been paid for the 24-month period, the Provider shall pay the Franchising Entity's reasonable costs of the audit.

**B.** Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the provider shall be made within 3 years from the date the compensation is remitted.

## X. Termination and Modification

This Franchise Agreement issued by a Franchising Entity may be terminated or the video service area footprint may be modified, except as provided under **Section 9 of the Act**, by the Provider by submitting notice to the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

## XI. Transferability

This Franchise Agreement issued by a Franchising Entity or an existing franchise of an incumbent video service Provider is fully transferable to any successor in interest to the Provider to which it is initially granted. A notice of transfer shall be filed with the Franchising Entity within 15 days of the completion of the transfer. The Provider will use Attachment 2, when notifying the Franchising Entity. The successor in interest will assume the rights and responsibilities of the original provider and will also be required to complete their portion of the Transfer Agreement located within Attachment 2.

## XII. Change of Information

If any of the information contained in the Franchise Agreement changes, the Provider shall timely notify the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

## XIII. Confidentiality

Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and MUST BE KEPT CONFIDENTIAL.

**A.** The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

"[insert PROVIDER'S NAME]
[CONFIDENTIAL INFORMATION]"

**B.** The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.

**C.** Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

## XIV. Complaints/Customer Service

**A.** The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.

**B.** The Provider shall be subjected to the penalties, as described under **Section 14 of the Act**, and the Franchising Entity and Provider may be subjected to the dispute process as described in **Section 10 of the Act**.

**C.** Each Provider shall annually notify its customers of the dispute resolution process required under **Section 10 of the Act**. Each Provider shall include the dispute resolution process on its website.

**D.** Before a customer may file a complaint with the Commission under **Section 10(5) of the Act**, the customer shall first attempt to resolve the dispute through the dispute resolution process established by the Provider in **Section 10(2) of the Act**.

**E.** A complaint between a customer and a Provider shall be handled by the Commission pursuant to the process as described in **Section 10(5) of the Act**.

**F.** A complaint between a Provider and a franchising entity or between two or more Providers shall be handled by the Commission pursuant to the process described in **Section 10(6) of the Act**.

**G.** In connection with providing video services to the subscribers, a provider shall not do any act prohibited by Section 10(1)(a-f) of the Act. The Commission may enforce compliance to the extent that the activities are not covered by **Section 2(3)(l) in the Act**.

## XV. Notices

Any notices to be given under this Franchise Agreement shall be in writing and delivered to a Party personally, by facsimile or by certified, registered, or first-class mail, with postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

*If to the Franchising Entity:*
(must provide street address)

City of Muskegon:

Attn:

Fax No.:

*If to the Provider:*
(must provide street address)

1.
41112 Concept Dr.
Plymouth, MI 48170
Attn: VP of Government Affairs
Fax No.: 248-233-4719

2.
600 Galleria Pkwy
Atlanta, GA 30339
Attn: Sen. Vice President, Government Relations

3.
One Comcast Center
Philadelphia, PA 19103
Attn: Government Affairs Department

Or such other addresses or facsimile numbers as the Parties may designate by written notice from time to time.

## XVI. Miscellaneous

**A.** Governing Law. This Franchise Agreement shall be governed by, and construed in accordance with, applicable Federal laws and laws of the State of Michigan.
**B.** The parties to this Franchise Agreement are subject to all valid and enforceable provisions of the Act.
**C.** Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute on and the same agreement.
**D.** Power to Enter. Each Party hereby warrants to the other Party that it has the requisite power and authority to enter into this Franchise Agreement and to perform according to the terms hereof.
**E.** The Provider and Franchising Entity are subject to the provisions of 2006 Public Act 480.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Franchise Agreement.

**City of Muskegon, a Michigan Municipal Corporation**

By

Print Name

Title

Address

City, State, Zip

Phone

Fax

Email

**Comcast of Muskegon, a Michigan General Partnership doing business as Comcast**

By

Timothy P. Collins

Print Name

Regional Senior Vice President

Title

41112 Concept Drive

Address

Plymouth, MI 48170

City, State, Zip

248-233-6736

Phone

248-233-4719

Fax

Tim_Collins@cable.comcast.com

Email

**FRANCHISE AGREEMENT** *(Franchising Entity to Complete)*

| |
|---|
| Date submitted: |
| Date completed and approved: |

# <u>ATTACHMENT 1</u>

## UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT
## (Pursuant To 2006 Public Act 480)
(Form must be typed)

| | | |
|---|---|---|
| Date: June 14, 2013 | | |
| Applicant's Name: Comcast of Muskegon | | |
| Address 1: 41112 Concept Dr. | | |
| Address 2 | | Phone: 248-233-4700 |
| City: Plymouth | State: MI | Zip: 48170 |
| Federal I.D. No. (FEIN): 84-1140664 | | |

**Company executive officers:**

| |
|---|
| Name(s): Timothy P. Collins |
| Title(s): Regional Senior Vice President |

**Person(s) authorized to represent the company before the Franchising Entity and the Commission:**

| | | |
|---|---|---|
| Name: John P. Gardner | | |
| Title: Senior Manager , Government Affairs | | |
| Address: 1401 E. Miller Rd., Lansing, MI 48911 | | |
| Phone: 517-334-5686 | Fax: 517-334-1880 | Email: John_Gardner@cable.comcast.com |

| | | |
|---|---|---|
| Name: Leslie A. Brogan | | |
| Title: Senior Director, Government Affairs | | |
| Address: 1401 E. Miller Rd., Lansing, MI 48911 | | |
| Phone: 517-334-5890 | Fax: 517-334-1880 | Email: Leslie_Brogan@cable.comcast.com |

**Describe the video service area footprint as set forth in Section 2(3e) of the Act. (An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.)**

As an incumbent provider, Comcast, is satisfying this requirement by allowing a franchising entity to seek right-of-way related information comparable to that required by a permit under the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3101 to 484.3120, as set forth in its last cable franchise entered before the effective date of this act.

[**Option A**: for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[**Option B:** for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[**Option C**: for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]

**Pursuant to Section 2(3)(d) of the Act, if the Provider is not an incumbent video Provider, provide the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) (the Video Service Area Footprint).**

| Date: |
|---|

**For All Applications:**

***Verification***
***(Provider)***

I, Timothy P. Collins, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

| *Name and Title (printed):* Timothy P. Collins, Regional Senior Vice President | |
|---|---|
| *Signature:* T P. Collins | *Date:* 6-17-2013 |

***(Franchising Entity)***

**City of Muskegon, a Michigan municipal corporation**

By ______________________

Print Name ______________________

Title ______________________

Address ______________________

City, State, Zip ______________________

Phone ______________________

Fax ______________________

Email ______________________

Date ______________________

ATTACHMENT