

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 26, 2007

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- CALL TO ORDER:
- PRAYER:
- PLEDGE OF ALLEGIANCE:
- ROLL CALL:
- HONORS AND AWARDS:
- INTRODUCTIONS/PRESENTATION:
 - A. 2007 Julia E. Hackley Interns. AFFIRMATIVE ACTION
- CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Fireworks Display – Muskegon Summer Celebration. CITY CLERK
 - C. 2007 Wage Matrix for Non-Union Part-Time and Limited-Term Employees. CIVIL SERVICE
 - D. FIRST READING: Amendment to the Zoning Ordinance – Section 300 (Districts) of Article III. PLANNING & ECONOMIC DEVELOPMENT
 - E. FIRST READING: Amendment to the Zoning Ordinance – Remove H. Heritage District Reference from Table I. PLANNING & ECONOMIC DEVELOPMENT
 - F. Approval of the Use & Maintenance of City Owned Property at 1441 Hoyt & 360 E. Isabella by the Healthy Neighborhoods Project. PLANNING & ECONOMIC DEVELOPMENT
 - G. Interagency Agreement with Muskegon County Community Mental Health. PUBLIC SAFETY
 - H. Approval of 2007 & 2008 Contract with Norton Shores for the Administration of their Community Development Block Grant Program. COMMUNITY & NEIGHBORHOOD SERVICES
 - I. City – MDOT Agreement for Federal Money Loan to Reconstruct McGraft Park Road, Glenside to Addison. ENGINEERING

J. City – MDOT Agreement for the Reconstruction of McGraft Park Road, Glenside to Addison. ENGINEERING

K. Request for Encroachment Agreement for Cable Installation on Roberts Street. ENGINEERING

L. Request for Encroachment Agreement for Lighted Sign on Pine Street. ENGINEERING

❑ PUBLIC HEARINGS:

❑ COMMUNICATIONS:

❑ CITY MANAGER'S REPORT:

❑ UNFINISHED BUSINESS:

❑ NEW BUSINESS:

A. Jurisdictional Transfer with Michigan Department of Transportation. CITY MANAGER

B. Engineering Agreement for Engineering Services with Wade Trim. ENGINEERING

❑ ANY OTHER BUSINESS:

❑ PUBLIC PARTICIPATION:

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

❑ ADJOURNMENT:

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE BECKER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the June 11th Commission Worksession, and the June 12th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 26, 2007

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, June 26, 2007.

Mayor Warmington opened the meeting with a prayer from Pastor Penny Johnson from the Oakcrest Church of God after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Lawrence Spataro, Sue Wierengo, Chris Carter, Kevin Davis, and Clara Shepherd, City Manager Bryon Mazade, City Attorney John Schrier, and Deputy City Clerk Linda Potter

2007-52 INTRODUCTIONS/PRESENTATION:

A. 2007 Julia E. Hackley Interns. AFFIRMATIVE ACTION

Dwana Thompson, Affirmative Action Director, introduced William Vauters who is working in the Planning Department and Brittany Tillman (not present) who is working in the Clerk's Office

2007-53 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the June 11th Commission Worksession, and the June 12th Regular Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Fireworks Display – Muskegon Summer Celebration. CITY CLERK

SUMMARY OF REQUEST: Summit Pyrotechnics is requesting approval of a fireworks display permit for July 4th and July 8th at the Muskegon Summer Celebration. Fire Marshall Metcalf has reviewed the request and recommends

approval contingent on inspection of the fireworks.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of the insurance.

C. 2007 Wage Matrix for Non-Union Part-Time and Limited-Term Employees. CIVIL SERVICE

SUMMARY OF REQUEST: Due to an oversight of information submitted in December 2006, the 2007 Wage Matrix for Non-Union Part-Time and Limited-Term Employees requires a mid-year adjustment for the seasonal Recreation Aide. With the current Michigan minimum wage at \$6.95 an hour, on July 1, 2007 it increases to \$7.15 an hour. The present pay range for the seasonal Recreation Aide is :

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$5.50	\$5.75	\$6.00	\$6.25	\$6.50	\$6.75	\$7.00

The top of the range only just meets the current state requirements and becomes inadequate as of July 1, 2007.

As proposed, the pay range below adequately addresses the new pay requirements as well as anticipated future wage mandates, considering that the federal minimum wage is expected to rise to \$7.25 per hour by 2008 and the Michigan minimum wage is scheduled to rise to \$7.40 per hour as of July 1, 2008. The below proposed range also allows for employee year-to-year wage progression, if called for.

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$7.25	\$7.50	\$7.75	\$8.00	\$8.25	\$8.50	\$8.75

FINANCIAL IMPACT: Accounted for in current budget.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of request.

D. FIRST READING: Amendment to the Zoning Ordinance – Section 300 (Districts) of Article III. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 300 (Districts) of Article III (Zoning Districts and Maps) of the zoning ordinance to remove the reference to the Heritage District.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning

Ordinance to Section 300, Article III to remove the reference to the Heritage District.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their June 14th meeting. The vote unanimous.

E. FIRST READING: Amendment to the Zoning Ordinance – Remove H, Heritage District Reference from Table I. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Table 1 (Heights, Areas, and Yards) and Table Notes, #6 of the zoning ordinance to remove the reference to the Heritage zone.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to remove the reference to the Heritage zone from Table 1 and Table Notes, #6.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their June 14th meeting. The vote was unanimous.

I. City – MDOT Agreement for Federal Money Loan to Reconstruct McGraft Park Road, Glenside to Addison. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of McGraft Park Road from Glenside to Addison and to approve the resolution authorizing the Mayor and City Clerk to sign the contract for the federal funds loan from the state.

The advantage on this project is that this whole agreement is merely a paper work matter since the city could not have spent any construction money against the federal funds to accrue any interest until those funds become available.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water funds as will be shown in the 2008 budget.

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

K. Request for Encroachment Agreement for Cable Installation on Roberts Street. ENGINEERING

SUMMARY OF REQUEST: West Shore Cardiology Consultants has submitted an encroachment agreement form requesting your permission to install 66' of 2"

PVC conduit (housing a 50x24 copper cable and a 6 fiber cable) under Roberts Street 318' north of the centerline of Sherman Blvd. to connect the communication line between the two buildings.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the encroachment agreement with supplemental conditions and compliance with required insurance coverage.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the Consent Agenda as read minus items F, G, H, J and L.

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

Nays: None

MOTION PASSES

2007-54 ITEMS REMOVED FROM THE CONSENT AGENDA:

F. Approval of the Use & Maintenance of City Owned Property at 1441 Hoyt & 360 E. Isabella by the Healthy Neighborhoods Project.

PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the use and maintenance of the City owned property located at 1441 Hoyt Street and 360 E. Isabella for a community garden. The properties are buildable and the City would retain the right to sell the properties with the Healthy Neighborhoods Project having time to remove the garden prior to any sales. The Healthy Neighborhood Project has proposed a garden with flowers at both locations. The neighborhood residents will be involved in the garden and the maintenance. All gardening tools will be stored off site. There will be no permanent structures on the site. The Healthy Neighborhoods Project has committed to maintaining the gardens.

FINANCIAL IMPACT: None. By having the maintenance agreement with the Healthy Neighborhoods Project, the City would not need to maintain the properties while the gardens are located on the properties.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution and maintenance agreement.

Motion by Commissioner Shepherd, second by Commissioner Spataro to approve the use and maintenance agreement for the City-owned property located at 1441 Hoyt Street and 360 E. Isabella by the Healthy Neighborhoods Project.

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

Wierengo

Nays: None

MOTION PASSES

G. Interagency Agreement with Muskegon County Community Mental Health. PUBLIC SAFETY

SUMMARY OF REQUEST: The Director of Public Safety is requesting permission to enter into an agreement with Muskegon County Community Mental Health for purposes of participating in a Jail Diversion/Mental Health Intervention program. All law enforcement agencies within Muskegon County have been asked to participate in this program.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the agreement.

Motion by Commissioner Carter, second by Commissioner Davis to approve the interagency agreement with Muskegon County Community Mental Health.

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

Nays: None

Abstain: Spataro

MOTION PASSES

H. Approval of 2007 & 2008 Contract with Norton Shores for the Administration of their Community Development Block Grant Program. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To direct the Mayor and City Clerk to sign the agreement between the City of Muskegon and the City of Norton Shores. In reference to the City of Muskegon's Community and Neighborhood Services office administering the Norton Shores CDBG program for the 2007-2008 fiscal year.

The total amount that the City of Muskegon will receive for administering the program is \$22,500 (twenty-two thousand five hundred.)

FINANCIAL IMPACT: Funding will be added to the City's Administration funds.

BUDGET ACTION REQUIRED: None needed.

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

Motion by Commissioner Carter, second by Vice Mayor Gawron to approve the 2007 & 2008 contract with Norton Shores for the administration of their Community Development Block Grant Program.

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

Nays: None

MOTION PASSES

J. City – MDOT Agreement for the Reconstruction of McGraft Park Road, Glenside to Addison. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of McGraft Park Road from Glenside to Addison and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the federal funds of \$197,558 and \$49,390 of state funds (Local Jobs Today Grant) for a total grant of \$246,948. The estimated total construction cost, without engineering, is \$286,100. The engineering cost is estimated at an additional 15% of the construction cost.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street fund as will appear in the 2008 budget.

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

Motion by Commissioner Davis, second by Commissioner Carter to approve the City – MDOT agreement for the reconstruction of McGraft Park Road, Glenside to Addison.

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

Nays: None

MOTION PASSES

L. Request for Encroachment Agreement for Lighted Sign on Pine Street. ENGINEERING

SUMMARY OF REQUEST: Bakker Auto Trim at 90 Hartford Ave. has submitted an encroachment agreement form requesting your permission to install a lighted sign on their building which will encroach over the sidewalk on Pine St. for approximately 18".

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the encroachment agreement.

Motion by Commissioner Davis, second by Commissioner Carter to approve the encroachment agreement for a lighted sign on Pine Street for Bakker Auto Trim.

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

Warmington

Nays: None

MOTION PASSES

2007-55 NEW BUSINESS:

A. Jurisdictional Transfer with Michigan Department of Transportation.
CITY MANAGER

SUMMARY OF REQUEST: To approve the Memorandum of Understanding (MOU) with the Michigan Department of Transportation (MDOT) for the jurisdictional transfer of the current US 31 Business Route (Muskegon and Webster Avenues) to the City and transfer Shoreline Drive to MDOT, and authorize the Mayor to sign the MOU. When this transfer transaction is complete, it will enable Shoreline Drive to become the business route and will return Muskegon and Webster Avenues to residential streets.

FINANCIAL IMPACT: Remaining Build Michigan III grant funds will be available to the City to fund eligible street work.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the MOU and the resolution authorizing the Mayor to sign the MOU.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the jurisdictional transfer with the Michigan Department of Transportation.

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

Nays: None

MOTION PASSES

B. Engineering Agreement for Engineering Services with Wade Trim.
ENGINEERING

SUMMARY OF REQUEST: Authorize staff to enter into an engineering services agreement with Wade Trim Inc. out of Grand Rapids to provide design, plans, specifications and bidding documents for the Muskegon & Webster conversion into two way streets. The scope of services consists of new traffic signals at 7th Street as well as signal modifications at Terrace Street for a total fee of \$18,600.

Wade Trim is being recommended for four main reasons:

A- We already have a contract with them for two other projects, signal installation at Harvey and Marquette and traffic signals modifications along Laketon Ave. Corridor on with they have done an excellent job thus far.

B- Wade Trim is the engineer that assembled the conceptual plans of the

conversion and provided recommendations which have been reviewed by the downtown group and the state.

C- The proposed fee of \$18,600 is very reasonable.

D- Deadline to meet the community's desire to convert Muskegon & Webster into two way streets shortly after Labor Day of this year makes it difficult to solicit and review other proposals at this time.

FINANCIAL IMPACT: The engineering fee of \$18,600 for the design and specifications plus construction engineering at an additional 15%.

BUDGET ACTION REQUIRED: None, the cost is budgeted for.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Wade Trim Inc.

Motion by Vice Mayor Gawron, second by Commissioner Shepherd to authorize staff to enter into an engineering services agreement with Wade Trim Inc. for the Muskegon and Webster conversion into two way streets.

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

Nays: None

MOTION PASSES

C. Liquor License Transfer - D & L of Michigan, LLC, 435-441 W. Western Avenue. CITY MANAGER

SUMMARY OF REQUEST: Recommend approval to the Liquor Control Commission of a request from D & L of Michigan, LLC, to transfer ownership of the 2006 Class C Licensed Business with Dance Permit, located in escrow at 3621 Getty, Norton Shores, MI 49444, from North-Saylor, Inc.; transfer location to 435-441 W. Western Avenue, Muskegon, MI 49440, Muskegon County; cancel existing Outdoor Service (1 area); requests a new SDM License to be held in conjunction; and requests a New Entertainment Permit and New Outdoor Service (1 area).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve, final inspections are complete.

Motion by Commissioner Spataro, second by Commissioner Carter to approve the liquor license transfer for D & L of Michigan, LLC, at 435-441 W. Western Avenue.

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

Nays: None

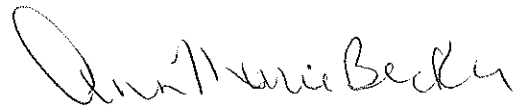
MOTION PASSES

ANY OTHER BUSINESS: Commissioner Davis commented on the Farmer's Market. Commissioner Spataro commended the Mayor, City Manager, City Attorney, and Public Safety Director on the handling of the Sieradzki house situation. Commissioner Shepherd commented on the Taste of Muskegon event. Commissioner Wierengo recommended a member of staff attend the Lead Conference.

PUBLIC PARTICIPATION: comments were heard reference safety at Pere Marquette and the demolition of the Sieradzki house.

ADJOURNMENT: The City Commission Meeting adjourned at 7:13 p.m.

Respectfully submitted,

A handwritten signature in cursive script, reading "Ann Marie Becker". The signature is written in dark ink and is positioned above the printed name and title.

Ann Marie Becker, MMC
City Clerk

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Fireworks Display
Muskegon Summer Celebration

SUMMARY OF REQUEST: Summit Pyrotechnics is requesting approval of a fireworks display permit for July 4th and July 8th at the Muskegon Summer Celebration. Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of the insurance.

2007-53(b)

PERMIT

FOR FIREWORKS DISPLAY

Act 358, P.A. 1968

This permit is not transferable. Possession of this permit by the herein named person will authorize him to possess, transport and display fireworks in the amounts, for the purpose, and at the place listed below only.

TYPE OF DISPLAY: ☒ PUBLIC DISPLAY ☐ AGRICULTURAL PEST CONTROL

ISSUED TO: Summit Pyrotechnics

NAME Steve Franklin

ADDRESS 3500 S. Getty, Muskegon, MI ^{AGE}

REPRESENTING

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

Muskegon Summer Celebration

ADDRESS 587 W. Western Ave., Muskegon, MI

NUMBER & TYPES OF FIREWORKS:

20 - 12", 20 - 10", 80 - 8", 400 - 6", 400 - 5", 600 - 4",
and 1200 - 3"

DISPLAY: Barge - Muskegon Lake

EXACT LOCATION 1000 feet north of Heritage Landing

CITY, VILLAGE, TOWNSHIP DATE July 4 & 8, 2007 TIME
City of Muskegon Rain Date July 5 & 9, 2007 10:20 p.m.

BOND OR INSURANCE FILED: ☒ YES ☐ NO AMOUNT \$1,000,000

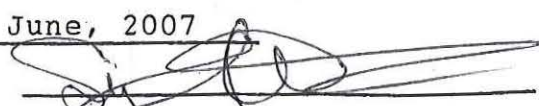
ISSUED BY:

Issued by action of the MUSKEGON CITY COMMISSION

(council, commission, board)

of the CITY of MUSKEGON
(city, village, township) (name of city, village, township)

on the 26th day of June, 2007


Stephen J. Warmington, Mayor

(signature & position of council, commission or board representative)

APPLICATION

FOR FIREWORKS DISPLAY PERMIT

Act 358, P.A. 1968

DATE OF APPLICATION

6-14-07

1. TYPE OF DISPLAY:



Public Display



Agricultural Pest Control

2. APPLICANT

NAME OF PERSON

ADDRESS

AGE: Must be 21 or over

Summit Pyrotechnics

3500 Summit S. Gettly

IF A CORPORATION: Name of President

ADDRESS

3. PYROTECHNIC OPERATOR

NAME

ADDRESS

AGE: Must be 21 or over

Steve Franklin

3500 S. Gettly

EXPERIENCE:

NUMBER OF YEARS

NUMBER OF DISPLAYS

WHERE

20 years

500+

22 States

NAMES OF ASSISTANTS:

NAME

ADDRESS

AGE

NAME

ADDRESS

AGE

4. NON-RESIDENT APPLICANT

NAME

ADDRESS

Name of Michigan Attorney or Resident Agent

ADDRESS

TELEPHONE NUMBER

5. EXACT LOCATION OF PROPOSED DISPLAY

Barge - Muskegon Lake 1000 Feet North of Heritage Landing

DATE

TIME

7-4-07 and 7-8-07

10:20 pm. Rain date 7-5-07 - 7-8-07

6. NUMBER AND KINDS OF FIREWORKS TO BE DISPLAYED

20-12"

20-10"

80-8"

400-6"

400-5"

600-4"

1200-3"

MANNER & PLACE OF STORAGE PRIOR TO DISPLAY

Shipped to site via truck.

(Subject to Approval of Local Fire Authorities)

7. FINANCIAL RESPONSIBILITY

A. AMOUNT OF BOND OR INSURANCE

(to be set by municipality)

\$

B. BONDING CORPORATION OF INSURANCE COMPANY: NAME

ADDRESS

STEVEN R. FRANKLIN
3500 S. GETTY ST.
MUSKEGON, MI 49444

74-1383/724
16000010

2867

DATE 6-14-07

PAY TO THE
ORDER OF

City of Muskegon

\$ 150.00

One Hundred Fifty

DOLLARS

Security Features
Scratch & Reveal
Date on Back



MUSKEGON
COMMERCE
BANK
Muskegon, MI

MEMO

Permit-display

Steven R. Franklin

⑆072413832⑆

⑆6⑈000⑈010⑈ 2867

2007-53(b)

PERMIT

FOR FIREWORKS DISPLAY

Act 358, P.A. 1968

This permit is not transferable. Possession of this permit by the herein named person will authorize him to possess, transport and display fireworks in the amounts, for the purpose, and at the place listed below only.

TYPE OF DISPLAY: ☒ PUBLIC DISPLAY ☐ AGRICULTURAL PEST CONTROL

ISSUED TO: Summit Pyrotechnics

NAME Steve Franklin

ADDRESS 3500 S. Getty, Muskegon, MI AGE

REPRESENTING

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

Muskegon Summer Celebration

ADDRESS 587 W. Western Ave., Muskegon, MI

NUMBER & TYPES OF FIREWORKS:

20 - 12", 20 - 10", 80 - 8", 400 - 6", 400 - 5", 600 - 4",
and 1200 - 3"

DISPLAY: Barge - Muskegon Lake

EXACT LOCATION 1000 feet north of Heritage Landing

CITY, VILLAGE, TOWNSHIP DATE July 4 & 8, 2007 TIME
City of Muskegon Rain Date July 5 & 9, 2007 10:20 p.m.

BOND OR INSURANCE FILED: ☒ YES ☐ NO AMOUNT 1,000,000

ISSUED BY:

Issued by action of the MUSKEGON CITY COMMISSION

(council, commission, board)

of the CITY of MUSKEGON
(city, village, township) (name of city, village, township)

on the 26th day of June, 2007


Stephen J. Warmington, Mayor

(signature & position of council, commission or board representative)

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/28/2007

PRODUCER Phone: 440-248-4711 Fax: 440-248-5406
Britton-Gallagher and Associates, Inc.
6240 SOM Center Rd.
Cleveland OH 44139

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Rozzi, Inc.
P.O. Box 5
Loveland OH 45140-0005

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Lexington Insurance Co

INSURER B: Granite State Insurance Co.

23809

INSURER C: Arch Specialty Ins Co

INSURER D:

INSURER E:

COVERAGES

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

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC	6990213	3/25/2007	3/25/2008	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ALLOWED AUTOS SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	CA93837165	3/25/2007	3/25/2008	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C	EXCESS/UMBRELLA LIABILITY ☒ OCCUR ☐ CLAIMS MADE DEDUCTIBLE ☒ RETENTION \$10000	ULP0005180	3/25/2007	3/25/2008	EACH OCCURRENCE \$900,000 AGGREGATE \$900,000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS IOTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

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

Dates of Displays: July 4, 2007 and July 8, 2007
Additional insured: Muskegon Summer Celebration; City of Muskegon, all elected and appointed officials, all employees and volunteers; County of Muskegon and Great Lakes Dock are additional insured as respects to the July 4 and 8 2007 (RD July and July 9 respectively) Fireworks Display at Muskegon Lake 800' north of Heritage Landing; Summit Pyrotechnics

CERTIFICATE HOLDER

City of Muskegon
933 Terrace
Muskegon MI 49440 231-739-1226

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

933 Terrace Street
Muskegon, MI 49440

OFFICE 231-724-6705
FAX 231-724-4178

CITY OF MUSKEGON CLERK'S OFFICE

FAX COVER SHEET

To: Tim McClorey From: Linda

Fax: _____ Pages(including cover) 2

Phone: _____ Date: 6-28-07

Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Hi Tim,

Please check the insurance coverage
for the fireworks display for the
Summer Celebration.

Thanks,

Linda

AGENDA ITEM

CITY COMMISSION MEETING June 26, 2007

TO: HONORABLE MAYOR AND CITY COMMISSIONERS
cc: City Manager Bryon Mazade
FROM: Karen Scholle, Civil Service Director
DATE: June 11, 2007
RE: 2007 Wage Matrix for Non-Union Part-Time and Limited-Term Employees

SUMMARY OF REQUEST

Due to an oversight of information submitted in December 2006, the 2007 Wage Matrix for Non-Union Part-Time and Limited-Term Employees requires a mid-year adjustment for the seasonal Recreation Aide. With the current Michigan minimum wage at \$6.95 an hour, on July 1, 2007 it increases to \$7.15 an hour. The present pay range for the seasonal Recreation Aide is:

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$5.50	\$5.75	\$6.00	\$6.25	\$6.50	\$6.75	\$7.00

The top of the range only just meets the current state requirements and becomes inadequate as of July 1, 2007.

As proposed, the pay range below adequately addresses the new pay requirement as well as anticipated future wage mandates, considering that the federal minimum wage is expected to rise to \$7.25 per hour by 2008 and the Michigan minimum wage is scheduled to rise to \$7.40 per hour as of July 1, 2008. The below proposed range also allows for employee year-to-year wage progression, if called for.

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$7.25	\$7.50	\$7.75	\$8.00	\$8.25	\$8.50	\$8.75

FINANCIAL IMPACT

Accounted for in current budget.

BUDGET ACTION REQUIRED

None.

STAFF RECOMMENDATION

Approval of request.

Commission Meeting Date: June 26, 2007

Date: June 15, 2007
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CB*
RE: Amendment to the Zoning Ordinance – Section 300
(Districts) of Article III

SUMMARY OF REQUEST:

Request to amend Section 300 (Districts) of Article III (Zoning Districts and Maps) of the zoning ordinance to remove the reference to the Heritage District.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to from Section 300, Article III to remove the reference to the Heritage District.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 6/14 meeting. The vote was unanimous.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

June 14, 2007

Hearing; Case 2007-23: Staff initiated request to amend Section 300 (Districts) of Article III, (Zoning Districts and Map), of the zoning ordinance to remove H, Heritage District as a delineated zoning district.

BACKGROUND

Since the H, Heritage District has now been eliminated, any references to it needs to be removed from the Zoning Ordinance.

NEW LANGUAGE

Deletions are ~~crossed-out~~ and additions are in **bold**:

For the purposes of this Ordinance, the City of Muskegon is hereby delineated in the following Districts:

R	One Family Residential
MHP	Mobile Home Park
RT	Two Family Residential
RM-1	Low Density Multiple Family Residential
RM-2	Medium Density Multiple Family Residential
RM-3	High Density Multiple Family Residential
MC	Medical Care
B-1	Limited Business
B-2	Convenience and Comparison Business
B-3	Central Business
B-4	General Business
B-5	Central Governmental Service
I-1	Light Industrial
I-2	General Industrial
WI-PUD	Waterfront Industrial Planned Unit Development
OSC	Open Space Conservation
OSR	Open Space Recreation
LR	Lakefront Recreation
WM	Waterfront Marine
H	Heritage

DELIBERATION

I move that the amendment to Section 300, (Districts), of Article III, Zoning Districts and Map, of the City of Muskegon Zoning Ordinance to remove the reference to H as a delineated district, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2227

An ordinance to amend Section 300 (Districts), Article III (Zoning Districts and Maps), to remove the reference to the Heritage District.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 300 (Districts), Article III (Zoning Districts and Maps) are amended to remove the reference to the Heritage District, as follows:

For the purposes of this Ordinance, the City of Muskegon is hereby delineated in the following Districts:

R	One Family Residential
MHP	Mobile Home Park
RT	Two Family Residential
RM-1	Low Density Multiple Family Residential
RM-2	Medium Density Multiple Family Residential
RM-3	High Density Multiple Family Residential
MC	Medical Care
B-1	Limited Business
B-2	Convenience and Comparison Business
B-3	Central Business
B-4	General Business
B-5	Central Governmental Service
I-1	Light Industrial
I-2	General Industrial
WI-PUD	Waterfront Industrial Planned Unit Development
OSC	Open Space Conservation
OSR	Open Space Recreation
LR	Lakefront Recreation
WM	Waterfront Marine

This ordinance adopted:

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

Nayes: None

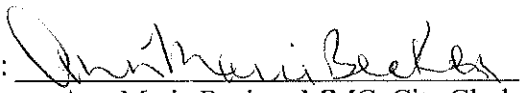
Adoption Date: June 26, 2007

Effective Date: July 14, 2007

First Reading: June 26, 2007

Second Reading: N/A

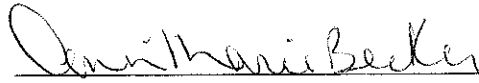
CITY OF MUSKEGON

By: 
Ann Marie Becker, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 26th day of June, 2007, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: June 26, 2007.


Ann Marie Becker, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on June 26, 2007, the City Commission of the City of Muskegon adopted an ordinance to amend Section 300 (Districts), Article III, (Zoning Districts and Maps) to remove the reference to the Heritage District.

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

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

Published July 4, 2007.

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: June 26, 2007

Date: June 15, 2007
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *ABC*
RE: Amendment to the Zoning Ordinance – Remove H, Heritage District Reference from Table I

SUMMARY OF REQUEST:

Request to amend Table I (Heights, Areas, and Yards) and Table Notes, #6 of the zoning ordinance to remove the reference to the Heritage zone.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to remove the reference to the Heritage zone from Table I and Table Notes, #6.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 6/14 meeting. The vote was unanimous.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

June 14, 2007

Hearing: Case 2007-24: Staff initiated request to amend Table I, (Heights, Areas, and Yards), Table Notes, #6 of the zoning ordinance to remove the reference to the H zone.

BACKGROUND

Since the H, Heritage District has been eliminated from the Zoning Ordinance, Table 1 and it's "Table Notes" need to be amended to remove any reference to it.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in bold:

6. ***** Minimum front setbacks for new principal structures in the R-1, RT, and B-3, ~~and H~~ zones, fronting on minor streets, may align with existing principal structures in the immediate area, even if the front setback is below the minimum required.

TABLE I: HEIGHTS, AREAS, AND YARDS

Zoning District	R-1	RT	RM-1 *****	RM-2 *****	RM-3 *****	B-1 *****	B-2 *****	B-3 *****	B-4 *****	B-5 *****	I-1 *****	I-2 *****	OSC** *****	OSR** *****	LR *****	WM *****	H *****	WI-PUD *****
Lot Size																		
Minimum (sq. ft.)	6,000	8,712	10,890	14,520	21,780	4,000	10,890	4,000	10,890	10,890	21,780	43,560	21,780	21,780	21,780	21,780	4,000	43,560
Density (dwelling unit per buildable acre)	7	10	16	24	48	---	---	---	---	---	---	---	---	---	---	24	---	---
Dedicated Common open space required	---	---	15%	15%	15%	---	---	---	---	---	---	---	---	---	15%	15%	---	---
Maximum Lot Coverage																		
Buildings:	50%	50%	60%	70%	70%	50%	70%	100%	70%	80%	85%	85%	20%	20%	60%	60%	100%	75%
Pavement:	10%	10%	20%	20%	20%	25%	25%	25%	25%	25%	25%	25%	15%	15%	15%	25%	25%	25%
Lot Width	50 ft.	75 ft.	100 ft.	125 ft.	150 ft.	40 ft.	100 ft.	30 ft.	100 ft.	40 ft.	100 ft.	150 ft.	100 ft.	100 ft.	150 ft.	150 ft.	30 ft.	150 ft.
Maximum building width	---	---	50%	50%	50%	---	---	---	---	---	---	---	---	---	50%	50%	---	---
Width to depth ratio	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3	1:3
Height																		
Minimum:	---	---	---	---	---	---	2 stories or 35 ft.***	2 stories or 35 ft.***	2 stories or 35 ft.***	2 stories or 35 ft.***	---	---	---	---	---	---	2 stories or 35 ft.***	---
Maximum:	2 stories (35 ft.)	2 stories (35 ft.)	3 stories (50 ft.)	4 stories (60 ft.)	5 stories (80 ft.)	2 stories (35 ft.)	2 stories (35 ft.)	6 stories (90 ft.)	2 stories (35 ft.)	4 stories (60 ft.)	3 stories (50 ft.)	3 stories (50 ft.)	2 stories (35 ft.)	2 stories (35 ft.)	4 stories (60 ft.)	4 stories (60 ft.)	6 stories (90 ft.)	3 stories (50 ft.)
Minimum Setbacks*																		
Front: Expressway & Arterial	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.
Front: Major/ Collector	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.
Front: Minor*****	15 ft.	15 ft.	20 ft.	20 ft.	20 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
Rear:*	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
From ordinary high Water mark or Wetland****	30 ft.	40 ft.	50 ft.	50 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.
Side:*																		
1-story (least/total)	6/16 ft.	8/20 ft.	8/20 ft.	8/20 ft.	8/20 ft.	8/20 ft.	8/20 ft.	---	8/20 ft.	8/20 ft.	10/20 ft.	10/20 ft.	6/16 ft.	6/16 ft.	8/20 ft.	8/20 ft.	---	10/20 ft.
2-story (least/total)	8/20 ft.	10/24 ft.	10/24 ft.	10/24 ft.	10/24 ft.	10/24 ft.	10/24 ft.	---	10/24 ft.	10/24 ft.	15/25 ft.	15/25 ft.	8/12 ft.	8/20 ft.	10/14 ft.	10/14 ft.	---	15/25 ft.
3-story (least/total)	---	---	12/28 ft.	12/28 ft.	12/28 ft.	---	---	---	---	12/28 ft.	20/30 ft.	20/30 ft.	---	---	12/28 ft.	12/28 ft.	---	20/30 ft.
4 or more stories (least/total)	---	---	---	16/36 + 4 ft./story over 4	16/36 + 4 ft./story over 4	---	---	---	---	16/36 + 4 ft./story over 4	---	---	---	---	16/36 + 4 ft./story over 4	16/36 + 4 ft./story over 4	---	---
Maximum Setbacks																		
Front: Expressway Arterial and Major	---	---	---	---	---	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	---	---	---	---	---	---	---	---
Front: Collector	---	---	---	---	---	40 ft.	40 ft.	40 ft.	40 ft.	40 ft.	---	---	---	---	---	---	---	---
Front: Minor	---	---	---	---	---	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.	---	---	---	---	---	---	---	---

*****See table preamble and notes*****

---- = Not applicable

DELIBERATION

I move that the amendment to Table I (Heights, Areas, and Yards), and Table 1 Notes, #6, of the City of Muskegon Zoning Ordinance to remove references to the H zoning district, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2228

An ordinance to amend Table I and Table Notes, #6, to remove the reference to the Heritage zone.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Table I and Table Notes, #6 are amended to remove the reference to the Heritage District, as follows:

6. ***** Minimum front setbacks for new principal structures in the R-1, RT, and B-3 zones, fronting on minor streets, may align with existing principal structures in the immediate area, even if the front setback is below the minimum required.

This ordinance adopted:

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

Nays: None

Adoption Date: June 26, 2007

Effective Date: July 14, 2007

First Reading: June 26, 2007

Second Reading: N/A

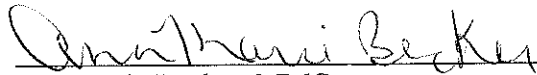
CITY OF MUSKEGON

By: Ann Marie Becker
Ann Marie Becker, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 26th day of June, 2007, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: June 26, 2007.


Ann Marie Becker, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on June 26, 2007, the City Commission of the City of Muskegon adopted an ordinance to amend Table I and Table Notes, #6 to remove the reference to the Heritage zone.

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

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

Published July 4, 2007.

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

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

Account No. 101-80400-5354

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
RE: City – MDOT Agreement for:
Federal money loan to reconstruct
McGraft Park Road, Glenside to Addison

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of McGraft Park Road from Glenside to Addison and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract for the federal funds loan from the state.

The advantage on this project is that this whole agreement is merely a paper work matter since the city could not have spent any construction money against the federal funds to accrue any interest until those funds become available.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water funds as will be shown in the 2008 budget.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION #2007-53(i)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF McGRAFT PARK ROAD FROM GLENSIDE TO ADDISON TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR THE MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN MARIE BECKER TO EXECUTE SAID CONTRACT

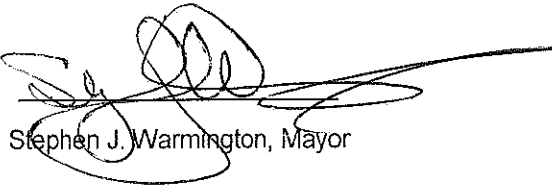
Moved by Commissioner Carter and supported by Commissioner Shepherd that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **07-7303** between the Michigan Department of Transportation and the City of Muskegon for the reconstruction of McGraft Park Road within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **07-7303** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

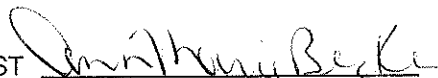
Adopted this 26th day of June, 2007.

BY



Stephen J. Warmington, Mayor

ATTEST



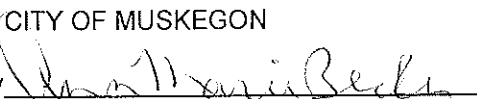
Ann Marie Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on June 26, 2007. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By



Ann Marie Becker, City Clerk



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

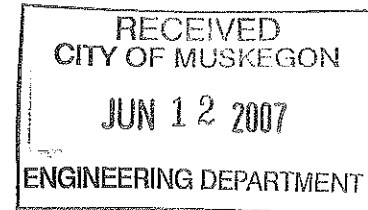
KIRK T. STEUDLE
DIRECTOR

June 4, 2007

Ms. Anne M. Becker
Clerk
City of Muskegon
933 Terrace Street, P.O. Box 536
Muskegon, MI 49443-0536

Dear Ms. Becker:

RE: MDOT Contract No.: 07-7303
Control Section: STUL 61407
Job Number: 84370



Enclosed is the original and one copy of the above described contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract. If this contract meets with your approval, please complete the following checklist:

 PLEASE DO NOT DATE THE CONTRACTS. MDOT will date the contracts when they are executed. A contract is not executed unless it has been signed by both parties.

 Secure the necessary signatures on all contracts.

 Include a certified resolution. The resolution should specifically name the officials who are authorized to sign the contracts.

 Return all copies of the contracts to my attention of the Department's Design Division, 2nd floor for MDOT execution.

In order to ensure that the work and payment for this project is not delayed, the agreement needs to be returned within 35 days from the date of this letter.

A copy of the executed contract will be forwarded to you. If you have any questions, please feel free to contact me at (517) 335-2264.

Sincerely,
Jackie Burch
Jackie Burch
Contract Processing Specialist
Design Support Area

Enclosure

CAB
Control Section: STUL 61407
Job No.: 84370
Project: STP 0761(018)
Federal Item No.: RR 5750
CFDA No.: 20.205 (Highway
Research Planning
& Construction)
Contract No.: 07-7303

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF MUSKEGON

LOCAL JOBS TODAY PROGRAM

LOAN CONTRACT

THIS LOAN CONTRACT, hereinafter referred to as the "CONTRACT," is made and entered into this date of **AUG 08 2007** by and between the Michigan Department of Transportation, of 425 West Ottawa Street, P.O. Box 30050, Lansing, MI 48909, hereinafter referred to as the "DEPARTMENT," and the CITY OF MUSKEGON, MICHIGAN, of 933 Terrace Street, P.O. Box 536, Muskegon, MI 49443-0536, hereinafter referred to as the "RECIPIENT."

WITNESSETH:

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

NOW, THEREFORE, the parties agree to the following:

Section 1. PURPOSE

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

the RECIPIENT is inconsistent with this CONTRACT and/or with federal or state laws, regulations, rules, or policies.

Reconstruction work along McGraft Park Road from Glenside Boulevard to Addison Street; including pavement removal, concrete sidewalk, sidewalk ramps, aggregate base, hot mix asphalt paving, and pavement marking work; and all together with necessary related work.

Section 2. CONTRACT TERM

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

Section 3. PROJECT FUNDING, BILLINGS, AND PAYMENTS

The DEPARTMENT will loan the RECIPIENT \$197,558. The RECIPIENT will pay interest at the rate of 4 percent annually. The loan funds will be used only for the PROJECT. The DEPARTMENT will retain the loan funds and make payments to PROJECT contractors and subcontractors on the RECIPIENT's behalf. The RECIPIENT directs the DEPARTMENT to convert federal advanced construction funds as soon as they become available. The assessment of interest will begin when the DEPARTMENT expends loan funds on the RECIPIENT's behalf. It is understood that the loan funds provided under this CONTRACT will not be sufficient to pay all PROJECT costs.

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

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

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

Section 4. ADMINISTRATION

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

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

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

Section 5. COMPLIANCE ACTIVITIES

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

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

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

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

Section 6. BREACH AND TERMINATION

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

- a. The RECIPIENT misrepresents any documentation or information provided to the DEPARTMENT to secure loan financing.
- b. The RECIPIENT fails to make a payment of any installment of interest under this CONTRACT or fails to make a due payment of any other debt or obligation now or later owed by RECIPIENT to the DEPARTMENT.
- c. The RECIPIENT defaults in the performance of any other obligation to the DEPARTMENT under this CONTRACT.

- d. The RECIPIENT becomes insolvent or makes an assignment for the benefit of creditors.
- e. Any guarantee or pledge made by the RECIPIENT that now or later secures payment for any or all indebtedness arising from this CONTRACT becomes terminated or limited for any reason (except as otherwise set forth herein or in 1951 PA 51) without the prior written consent or agreement of the DEPARTMENT.
- f. At any time the DEPARTMENT, acting in good faith, has cause to believe that the prospect of payment or performance under this CONTRACT is impaired.

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

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

Section 7. CONTRACTUAL OBLIGATIONS

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

Section 8. PERFORMANCE RESPONSIBILITY

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

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

Section 9. LOCAL AGENCY COST PARTICIPATION CONTRACT

The DEPARTMENT and the RECIPIENT agree that, with respect to the PROJECT, the RECIPIENT will enter into a Local Agency Cost Participation Contract consisting of Part I and Part II (Standard Agreement Provisions) with the DEPARTMENT prior to the disbursement of loan funds.

Section 10. NOTICES

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

If to the DEPARTMENT:

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

If to the RECIPIENT:

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

Section 11. SEVERABILITY

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

Section 12. ASSIGNMENT

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

Section 13. ACCESS AND AUDIT

- a. The RECIPIENT will establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this CONTRACT, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this CONTRACT.
- b. The RECIPIENT will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this CONTRACT. In the event of a dispute with regard to the allowable expenses or any other issue

under this CONTRACT, the RECIPIENT will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

- c. The RECIPIENT will allow the DEPARTMENT or its representative to inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. The RECIPIENT will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 U.S.C. 7501-7507).
- e. The RECIPIENT will comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.
 - i. Recipients expending a total of Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds from one or more funding sources in their fiscal year will submit two (2) copies to the address in part ii below:

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

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

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

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

- iii. Recipients must also comply with applicable state laws and regulations relative to audit requirements.
- iv. Recipients will not charge audit costs to the DEPARTMENT's federal programs that are not in accordance with the aforementioned OMB Circular A-133 requirements.

- v. All recipients are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.
- f. If any part of the work is subcontracted, the RECIPIENT will assure compliance with subsections (a), (b), (c), (d), and (e) above for all subcontracted work.

Section 14. PROHIBITION OF DISCRIMINATION

- a. In connection with the performance of the PROJECT under this CONTRACT, the RECIPIENT (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this CONTRACT.
- b. During the performance of this CONTRACT, the RECIPIENT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts related to this CONTRACT.

Section 15. ASSIGNMENT OF ANTITRUST RIGHTS

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

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

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

that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT.

Section 16. AWARD CONTINGENCY

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

Section 17. FEDERAL TAX CODE

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

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

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

Section 18. AWARD

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

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

CITY OF MUSKEGON

By: _____

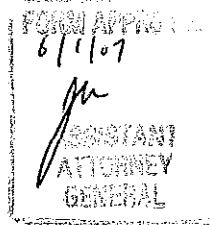
Stephen J. Warmington
Mayor



MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____

Ms. Paul
Title: Department Director



APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

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

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Request for Encroachment Agreement
Cable Installation in Roberts St.

SUMMARY OF REQUEST:

West Shore Cardiology Consultants has submitted the attached encroachment agreement form requesting your permission to install 66' of 2" PVC conduit (housing a 50x24 copper cable and a 6 fiber cable) under Roberts St. 318' north of the centerline of Sherman Blvd. to connect the communication line between the two buildings.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the encroachment agreement with supplemental conditions and compliance with required insurance coverage.

COMMITTEE RECOMMENDATION:

ACORD CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
06/11/2007PRODUCER (616)866-4488 FAX (616)866-2901
Morris, Schnoor & Gremel
65 S. Main
P. O. Box 599
Rockford, MI 49341THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.INSURED **WEST SHORE CARDIOLOGY CONSULTANTS**
1212 E SHERMAN
MUSKEGON, MI 49444

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: **Netherlands****24171**INSURER B: **Indiana****22659**INSURER C: **Peerless Insurance Company****24198**

INSURER D:

INSURER E:

COVERAGES

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

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
LTR	NSR						
A		GENERAL LIABILITY	BOP9885305	08/01/2006	08/01/2007	EACH OCCURRENCE	\$ 1,000,000
	☒	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	☐	CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COM/OP AGG	\$ 2,000,000
		☐ POLICY ☐ PRO-JECT ☐ LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		☐ ANY AUTO				BODILY INJURY (Per person)	\$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		☐ ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
B		EXCESS/UMBRELLA LIABILITY	CU9880406	08/01/2006	08/01/2007	EACH OCCURRENCE	\$ 2,000,000
	☒	OCCUR ☐ CLAIMS MADE				AGGREGATE	\$ 2,000,000
							\$
	☐	DEDUCTIBLE					\$
		RETENTION \$					\$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC9887505	08/01/2006	08/01/2007	WC STATU-TORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 500,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 500,000
		OTHER				E.L. DISEASE - POLICY LIMIT	\$ 500,000

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

RECEIVED
CITY OF MUSKEGON

JUN 12 2007

ENGINEERING DEPARTMENT

CERTIFICATE HOLDER

City of Muskegon
Engineering Department
Attn: Mohammed Al-Shatel
933 Terrace Street
Muskegon, MI 49440

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Patricia Wittekind/PATW

Patricia L. Wittekind

2990



West Shore Cardiology CONSULTANTS
1212 E. Sherman Boulevard, Muskegon, Michigan 49444

74-1394/724

6/20/2007

PAY
TO THE
ORDER OF

City of Muskegon

\$ **100.00

One Hundred and 00/100***** DOLLARS

City of Muskegon
P.O. Box 1825
Troy, MI 48099-1825

VOID AFTER 90 DAYS

Ralph G. Gamm

AUTHORIZED SIGNATURE

MEMO

Security features. Details on back.

⑈002990⑈ ⑆072413942⑆ 1000023866⑈

West Shore Cardiology CONSULTANTS
City of Muskegon

6/20/2007

2990

Fee for meeting regarding encroachment
Diagnostic Center

100.00

Community Shores B

100.00

2007-53(K)

CITY OF MUSKEGONENCROACHMENT AGREEMENT AND PERMIT

THIS AGREEMENT is made and entered into this 26th day of June 2007, by
and between the CITY OF MUSKEGON, a municipal corporation (hereinafter called CITY), and
West Shore Cardiology Consultants (hereinafter called LICENSEE).

RECITALS

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

Place a two inch I.D. PVC conduit under Roberts St. 318 feet
north of the centerline of Sherman Blvd. with a 50x24 copper
cable and a 6 fiber cable placed in the conduit.

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

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

Crossing the R/W of Roberts St. 318 feet north of the centerline
of Sherman Blvd.

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

THEREFORE,

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

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

This grant is subject to the following special conditions:

See supplemental
conditions

2. That LICENSEE shall pay to the CITY for the privilege hereby granted the sum of _____ Dollars (\$ _____), such payment to be made upon the signing of this agreement to be dated as of the _____ day of _____ 20____, to the City Treasurer of the City of Muskegon, and the privilege hereby granted shall continue for a period to terminate the first day of May, 20____ unless sooner terminated as hereinafter provided.

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

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

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

\$100,00,00

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

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

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

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

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

Witnesses:

Linda Potter
Linda Potter

JoAnn Krukowski
JoAnn Krukowski

Brenda Hopma 5-29-07

CITY OF MUSKEGON

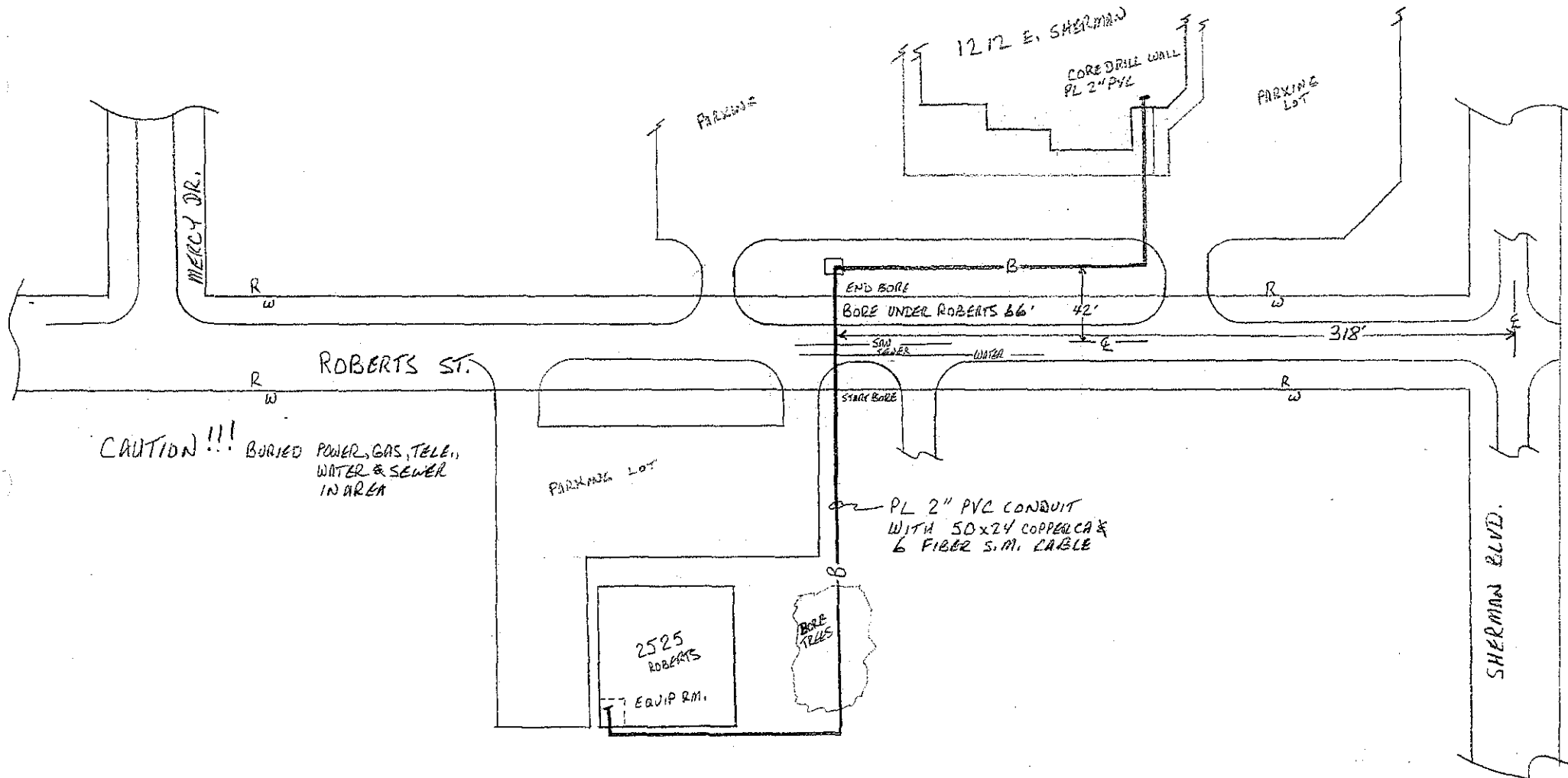
By: [Signature]
Stephen J. Warrington, Mayor

And [Signature]
Ann Marie Becker, Clerk

LICENSEE:

SUPPLEMENTAL CONDITIONS

- 1- The grantee shall, within a reasonable time, be fully responsible for the maintenance of the cables/conduits and any removal or relocation that becomes necessary to facilitate other public improvements within the right of way.
- 2- Grantee will be responsible for the maintenance and upkeep, for the duration of this agreement, a valid insurance coverage satisfactory to the City.
- 3- If approved (by City Commission), a permit to work in the right of way must be obtained from the Engineering Department before any work begins.
- 4- This system, if approved by commission, must be placed on the Miss Dig System as soon as installation is complete. Furthermore, this shall be the responsibility of the grantee.



DROPS		SURFACE		SUBSURFACE		EXCHANGE: MUSKEGON		EXCH #		W.O.# OF 75193T	
EXPOSURE		☒ FLD ☒ SOD ☒ BLKTP ☐ CONC ☐ GVL/STN		☒ FIRM ☐ CLAY ☒ SAND ☐ FLUID ☐ SOLID ROCK		DATE DRAWN		TITLE: PL CABLE WESTSHORE CARDIOLOGY		SCHEMATIC #	
						ENGINEER		CO. MUSKEGON		DRAWING #	
						APPROVED		TWP. CITY OF MUSKEGON		1 OF 1	
						SEC.		T R			

Commission Meeting Date: June 26, 2007

Date: June 18, 2007
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: Approval of the Use & Maintenance of City Owned Property at 1441 Hoyt & 360 E. Isabella by the Healthy Neighborhoods Project.

SUMMARY OF REQUEST:

To approve the use and maintenance of the City owned property located at 1441 Hoyt Street and 360 E. Isabella for a community garden. The properties are buildable and the City would retain the right to sell the properties with the Healthy Neighborhoods Project having time to remove the garden prior to any sales. The Healthy Neighborhoods Project has proposed a garden with flowers at both locations. The neighborhood residents will be involved in the garden and the maintenance. All gardening tools will be stored off site. There will be no permanent structures on the site. The Healthy Neighborhoods Project has committed to maintaining the gardens.

FINANCIAL IMPACT:

None. By having the maintenance agreement with the Healthy Neighborhoods Project, the City would not need to maintain the properties while the gardens are located on the properties.

BUDGET ACTION REQUIRED:

None

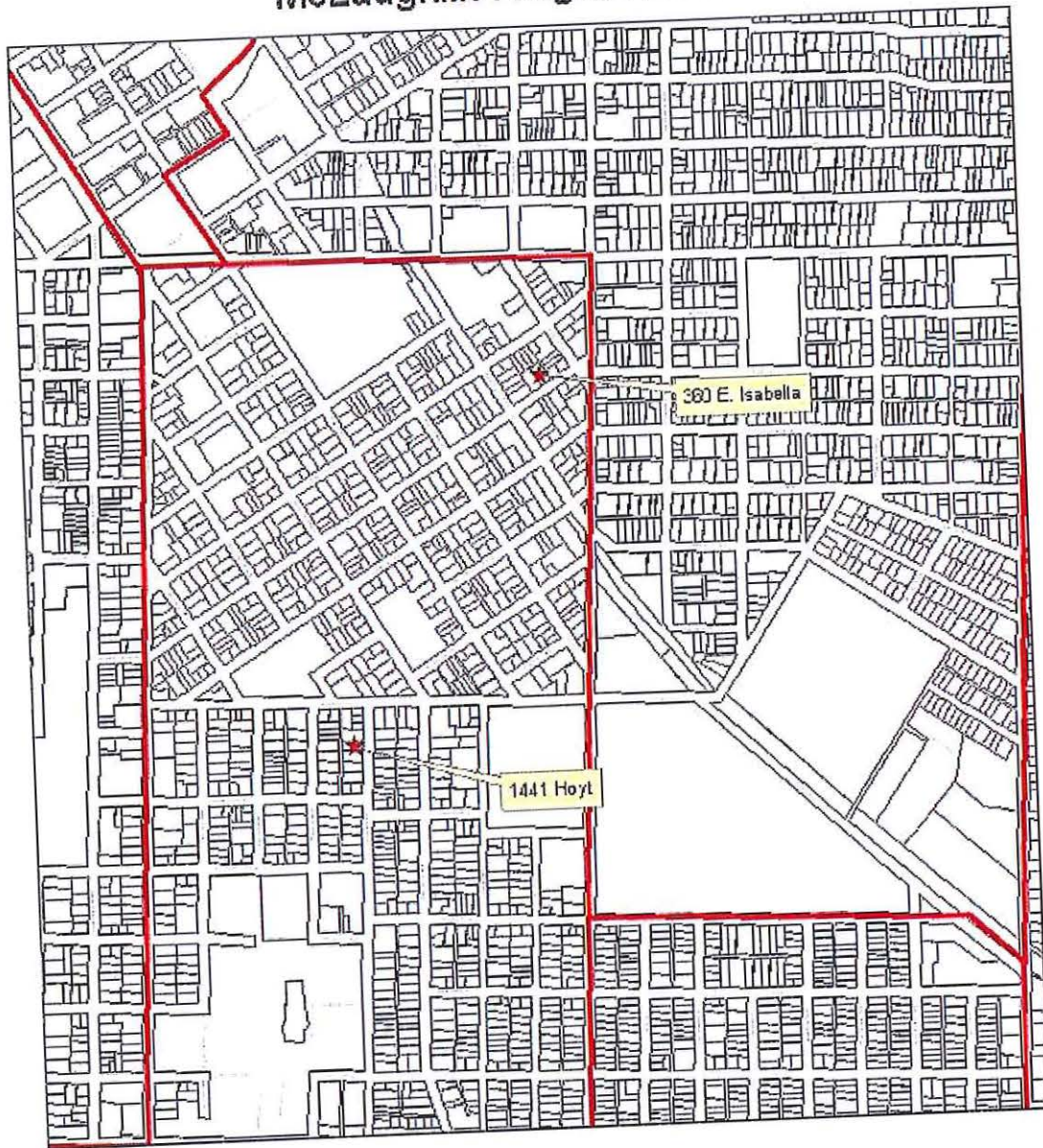
STAFF RECOMMENDATION:

To approve the attached resolution and to authorize both the Mayor and the Clerk to sign said resolution and maintenance agreement.

COMMITTEE RECOMMENDATION:

None.

McLaughlin Neighborhood



Resolution No. 2007-54(f)

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE USE AND MAINTENANCE OF TWO BUILDABLE LOTS AT 1441 HOYT & 360 E. ISABELLA IN THE MCLAUGHLIN NEIGHBORHOOD.

WHEREAS, The Healthy Neighborhoods Project be allowed to use and maintain the parcels designated as parcel numbers 24-205-273-0015-00 & 24-205-247-0006-00, located at 1441 Hoyt & 360 E. Isabella; and

WHEREAS, the City would reserve the right to sell the property and give the Healthy Neighborhoods Project time to remove the gardens prior to any sales; and

WHEREAS, the maintenance would relieve the City from having to maintain the properties and the maintenance costs while the gardens are there; and

NOW THEREFORE BE IT RESOLVED, that parcel numbers 24-205-273-0015-00 & 24-205-247-0006-00, located at 1441 Hoyt & 360 E. Isabella be maintained for a community gardens by the Healthy Neighborhoods Project.

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 15 BLK 273

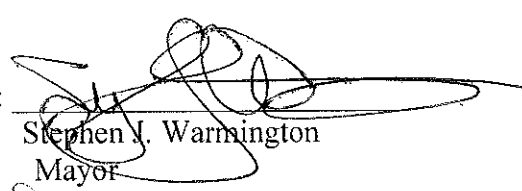
CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 6 BLK 247

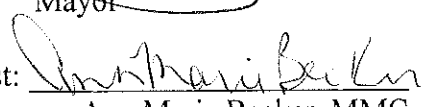
Adopted this 26th day of June, 2007.

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

Nays: None

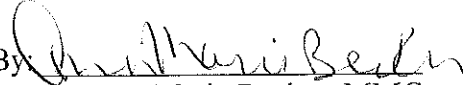
Absent None

By: 
Stephen J. Warmington
Mayor

Attest: 
Ann Marie Becker, MMC
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on June 26, 2007.

By: 
Ann Marie Becker, MMC
City Clerk

Maintenance Agreement

This Agreement is made July 1, 2007 ("Effective Date"), by and between the **City of Muskegon** ("City"), of 933 Terrace Street, Muskegon, Michigan 49440, and the Healthy Neighborhoods Project, 304 E. Isabella, Muskegon, Michigan, 49442.

Background

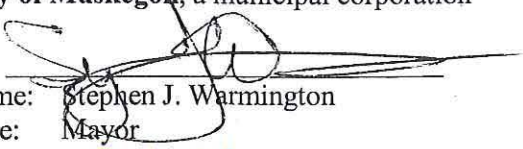
- A. "City" is the owner of the vacant lot located at 360 E. Isabella ("Property").
- B. The parties wish to enter into an agreement regarding the installation and maintenance of a flower garden located at the Property.
- C. Individual has agreed to perform the installation and physical maintenance of the garden at the Property pursuant to the terms set forth in this maintenance agreement.

Therefore, the parties agree as follows:

1. **General Agreement.** Individual agrees, at the sole cost of the Individual, to perform the installation and physical maintenance of a flower garden at the Property.
2. **Site Design.** Individual shall submit a garden design for the Property, and receive design approval from the City, prior to installation. City agrees not to unreasonably withhold its approval of the garden design. Any necessary permits or variances (fencing, lighting, electrical, plumbing, etc.) are the responsibility of the Individual and not the City and must be obtained prior to performing any work.
3. **Maintenance.** Individual shall be responsible for the physical installation of the flower garden and continuing maintenance of the Property, including i) mowing, trimming, fertilizing, weed control and any other routine maintenance of the grass, trees, shrubs and plantings at the Property, and ii) trash and litter removal from the Property.
4. **Buildable Lot.** City retains the right to sell the property at any time without prior notice to the Individual. In the event the property is sold, City shall notify the Individual, who shall have 30 days to remove any plantings and other items installed by the Individual.
5. **Term.** This maintenance agreement shall continue in effect until terminated by either party. Upon termination, Individual waives any claim against City for installation or maintenance of any item on the Property.
6. **Insurance.** Should the Individual place any items (picnic tables, grills, etc.) that are to remain on the property for an extended period of time, the Individual must purchase liability insurance and provide proof of the insurance to the City.
7. **Hold Harmless.** Individual shall indemnify, defend and save City harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property arising from any occurrence in or about the Property or from the occupancy or use by Individual of the Property or any part thereof or resulting in whole or part from any act or omission of Individual, its employees, invitees, licensees, contractors or agents. City shall not be liable for any injury to the person or property of Individual or any other persons on the Property resulting from the criminal or negligent acts of third persons occurring on or nearby the Property.

[signatures appear on following page]

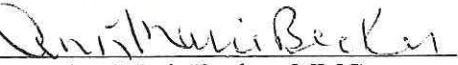
City of Muskegon, a municipal corporation

By: 

Name: Stephen J. Warmington

Title: Mayor

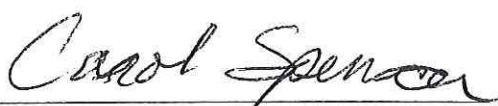
Date: 7-2-07

By: 

Name: Ann Marie Becker, MMC

Title: Clerk

Date: 7-2-07


Name: Carol Spencer, Member of the Healthy
Neighborhood Project

Date: 6-15-07

Contact #: 231-855-0934

Maintenance Agreement

This Agreement is made July 1, 2007 ("Effective Date"), by and between the **City of Muskegon** ("City"), of 933 Terrace Street, Muskegon, Michigan 49440, and the Healthy Neighborhoods Project, 1589 Hoyt St. Apt. G, Muskegon, Michigan, 49442.

Background

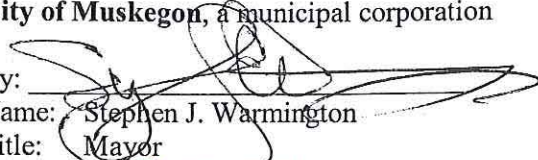
- A. "City" is the owner of the vacant lot located at 1441 Hoyt ("Property").
- B. The parties wish to enter into an agreement regarding the installation and maintenance of a flower garden located at the Property.
- C. Individual has agreed to perform the installation and physical maintenance of the garden at the Property pursuant to the terms set forth in this maintenance agreement.

Therefore, the parties agree as follows:

1. **General Agreement.** Individual agrees, at the sole cost of the Individual, to perform the installation and physical maintenance of a flower garden at the Property.
2. **Site Design.** Individual shall submit a garden design for the Property, and receive design approval from the City, prior to installation. City agrees not to unreasonably withhold its approval of the garden design. Any necessary permits or variances (fencing, lighting, electrical, plumbing, etc.) are the responsibility of the Individual and not the City and must be obtained prior to performing any work.
3. **Maintenance.** Individual shall be responsible for the physical installation of the flower garden and continuing maintenance of the Property, including i) mowing, trimming, fertilizing, weed control and any other routine maintenance of the grass, trees, shrubs and plantings at the Property, and ii) trash and litter removal from the Property.
4. **Buildable Lot.** City retains the right to sell the property at any time without prior notice to the Individual. In the event the property is sold, City shall notify the Individual, who shall have 30 days to remove any plantings and other items installed by the Individual.
5. **Term.** This maintenance agreement shall continue in effect until terminated by either party. Upon termination, Individual waives any claim against City for installation or maintenance of any item on the Property.
6. **Insurance.** Should the Individual place any items (picnic tables, grills, etc.) that are to remain on the property for an extended period of time, the Individual must purchase liability insurance and provide proof of the insurance to the City.
7. **Hold Harmless.** Individual shall indemnify, defend and save City harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property arising from any occurrence in or about the Property or from the occupancy or use by Individual of the Property or any part thereof or resulting in whole or part from any act or omission of Individual, its employees, invitees, licensees, contractors or agents. City shall not be liable for any injury to the person or property of Individual or any other persons on the Property resulting from the criminal or negligent acts of third persons occurring on or nearby the Property.

[signatures appear on following page]

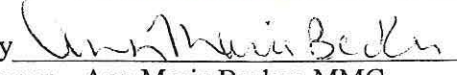
City of Muskegon, a municipal corporation

By: 

Name: Stephen J. Warmington

Title: Mayor

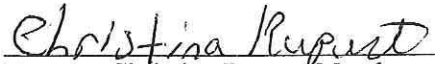
Date: 7-2-07

By: 

Name: Ann Marie Becker, MMC

Title: Clerk

Date: 7-2-07



Name: Christina Rupert, Member of the Healthy
Neighborhoods Project

Date: 6-15-07

Contact #: 231-855-4970

City Commission Meeting
Tuesday June 26, 2007

TO: Honorable Mayor and City Commissioners

FROM: Anthony L. Kleibecker, Director of Public Safety

DATE: June 15, 2007

SUBJECT: Interagency Agreement w/ Muskegon County Community Mental Health

Summary of Request:

The Director of Public Safety is requesting permission to enter into an agreement with Muskegon County Community Mental Health for purposes of participating in a Jail Diversion/Mental Health Intervention program. All law enforcement agencies within Muskegon County have been asked to participate in this program.

Financial Impact:

None.

Budget Action Required:

None

Staff Recommendation:

Approval of the agreement.

**INTERAGENCY AGREEMENT
BETWEEN
MUSKEGON COUNTY COMMUNITY MENTAL HEALTH
AND
MUSKEGON COUNTY PROSECUTING ATTORNEY
MUSKEGON COUNTY SHERIFF'S OFFICE
MUSKEGON COUNTY DISTRICT COURT PROBATION DEPARTMENT
MUSKEGON COUNTY FAMILY COURT
MUSKEGON COUNTY JUVENILE DETENTION CENTER
MUSKEGON COUNTY LAW ENFORCEMENT AGENCIES
MUSKEGON COUNTY COMMUNITY CORRECTIONS
STATE OF MICHIGAN PROBATION OFFICE**

It is the purpose of this agreement to assure cooperative procedures between CMHS of Muskegon County and the Undersigned in the provision of jail Diversion Services.

Section 207 of the Michigan Mental Health Code, MCC 330.1207, specifies that each community mental health services program shall provide services designed to divert persons with serious mental illness, serious emotional disturbance, or developmental disability into appropriate mental health treatment or facilities.

Definitions:

Jail diversion/mental health intervention means a collaborative, integrated program utilizing a community's resources to divert persons with serious mental illness, serious emotional disturbance, and developmental disabilities who have committed misdemeanors and non-violent felonies to mental health services and/or as an alternative to being charged and incarcerated in a county jail or municipal detention facility.

Jail diversion services/mental health intervention services may be afforded to individuals at any time as appropriate. This includes before they are taken into custody, after being taken into custody or arrested, before they are booked, after they have been booked, before their arraignment or after their arraignment, before they are convicted, or as a condition of probation.

Serious mental illness is defined as a diagnosable mental, behavioral, or emotional disorder affecting an adult:

- (i) that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American Psychiatric Association and approved by the Michigan Department of Community Health (MDCH); and,
- (ii) that has resulted in functional impairment that substantially interferes with or limits one or more major life activities.

Serious emotional disturbance is defined as a diagnosable mental, behavioral, or emotional disorder affecting a minor (less than 18 years of age):

- (i) that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American Psychiatric Association and approved by the MDCH; and,
- (ii) that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities.

Developmental disability is defined as:

- (i) a severe, chronic condition that is attributable to a mental and/or physical impairment;
- (ii) that is manifested before the age of 22;
- (iii) that is likely to continue indefinitely;
- (iv) that results in substantial functional limitations in three or more areas of major life activity; and
- (v) that reflects the individual's need for services that are of lifelong or extended duration.

The Participating Agencies Agree:

1. To participate in an adult jail diversion program by contributing staff time, cooperation and agency resources (see attachments: CMHS of Muskegon County Jail Diversion Policy and Law Enforcement Jail Diversion Policy and Procedures).
2. To participate in the creation of a juvenile justice diversion program contributing staff, time, cooperation and agency resources.
3. To establish a committee of key agency representatives to meet a minimum of once per quarter to monitor and evaluate jail diversion services, establish procedures, and modify and/or approve any new procedures.
4. To identify liaison personnel to manage all key interactions.
5. To provide cross training activities necessary to assure that both mental health service providers and law enforcement/prosecutor's office representatives have a common understanding of jail diversion services.
6. To contribute any necessary data for a jail diversion database maintained by CMHS of Muskegon County and used for the purpose of monitoring and evaluating the jail diversion program.

Review of the Agreement:

The parties agree to review the terms of the Agreement every two years from date of signature.

Termination:

By Either Party Without Cause. This Agreement may be terminated by either party at any time and for any reason upon sixty (60) days prior written notice to the other party.

By Either Party for Breach. Either party may terminate this Agreement upon a breach of this Agreement by the other Party if such breach is not remedied within thirty (30) days after receipt by such other party of written notice thereof from the terminating party.

It is agreed that written communication and/or notification pursuant to this Agreement shall be deemed to have been duly given if delivered or mailed, postage prepaid, to the respective parties as follows:

CMHS of Muskegon County

By: _____ Date: _____

Muskegon County Prosecuting Attorney

By: _____ Date: _____

Muskegon County Sheriff Department

By: _____ Date: _____

Muskegon County District Court Probation Department

By: _____ Date: _____

Muskegon County Family Court

By: _____ Date: _____

Muskegon County Juvenile Detention Center

By: _____ Date: _____

State of Michigan Probation Office

By: _____ Date: _____

Fruitport Police Department

By: _____ Date: _____

Michigan State Police – Grand Haven

By: _____ Date: _____

Montague Police Department

By: _____ Date: _____

Muskegon Police Department

By: _____ Date: _____

Muskegon Heights Police Department

By: _____ Date: _____

Muskegon Township Police Department

By: _____ Date: _____

North Muskegon Police Department

By: _____ Date: _____

Norton Shores Police Department

By: _____ Date: _____

Roosevelt Park Police Department

By: _____ Date: _____

WEMET

By: _____ Date: _____

Whitehall Police Department

By: _____ Date: _____

Commission Meeting

June 19, 2007

Date: June 26, 2007

To: Honorable Mayor and City Commission

From: Community Neighborhood Services

Re: Approval of 2007 & 2008 Contract with Norton Shores for the administration of their Community Development Block Grant Program.

Summary of Request: To direct the Mayor and City Clerk to sign the attached agreement between the City of Muskegon and the City of Norton Shores. In reference to the City of Muskegon's Community and Neighborhood Services office administrating the Norton Shores CDBG program for the 2007 – 2008 fiscal year.

The total amount that the City of Muskegon will receive for administrating the program is \$22,500 (twenty-two thousand five hundred.)

Financial Impact: Funding will be added to the City's Administration funds.

Staff Recommendation: To direct Mayor and City Clerk to sign the attached agreement.

Budget Action: None needed.

Committee Recommendation: None needed.

**City of Muskegon/City of Norton Shores
CDBG Program Administration Agreement**

Agreement made and entered into this 26th day of June, 2007, by and between the City of Muskegon, a Michigan municipal corporation ("Muskegon"), and the City of Norton Shores, a Michigan municipal corporation ("Norton Shores"), with reference to the following facts:

Background

Norton Shores desires that Muskegon assume responsibilities for the administration of the Norton Shores' Community Development and Block Grant ("CDBG") Program.

Therefore, the parties agree as follows:

1. **Administration of CDBG program.** Muskegon agrees to assume responsibility for the preparation and submission of the following CDBG documents on behalf of Norton Shores:

- a. Federal Application 424, narratives, project tables, certifications, Environmental Summary, Combined Notice of no Significant findings and Intent to Release funds.
- b. Consolidated Annual Performance and Evaluation Report, public hearing notice narratives, reports including performance measures criteria (using CPMP format).
- c. Semi-Annual Labor Standard Enforcement Report (form 4710).
- d. Contract and Subcontract Activity Report (form 2516).
- e. CDBG liens for projects, in accordance with HUD guidelines and regulations, as well as any other applicable Norton Shores requirements.
- f. Preparation of quarterly reports to comply with CAPER, maintaining subrecipient contract format for the City of Norton Shores' contract with the American Red Cross.

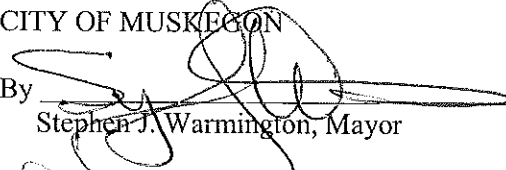
Norton Shores shall provide Muskegon with a copy of all forms previously used by Norton Shores, and Muskegon shall provide a copy of the above reports to Norton Shores upon completion.

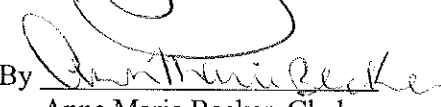
2. **Terms of CDBG Fund Payments.** Muskegon shall submit payment requests for release of CDBG funds to Norton Shores' Financial Department, and Norton Shores shall remit payment within 10 days of a payment request by Muskegon.

3. **Administration Fee.** Norton Shores shall pay Muskegon \$22,500 per program year for administration of the CDBG program. Payment shall be made by way of quarterly payments beginning on July 1, 2007.

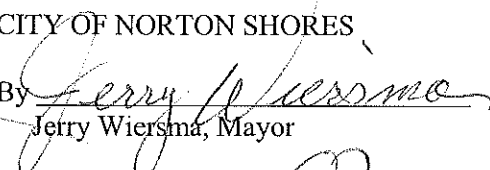
4. **Term of the Contract.** The parties agree that this contract shall be effective July 1, 2007, through June 30, 2008. In addition, either party may terminate this Agreement at any time, and for any reason, upon 45 days written notice to the other party. Upon termination of the contract, Muskegon shall owe Norton Shores a pro rata return of the unearned Administration Fee paid to date.
5. **Building Inspection.** Norton Shores' Building Inspection Department will perform all inspections for CDBG projects and submit the inspection reports to Muskegon for inclusion in the relevant project file.
6. **Purchasing Guidelines.** Muskegon and Norton Shores agree to evaluate the current CDBG program purchasing guidelines used by Norton Shores, and establish a written quotation and sealed project bid system acceptable to both parties.
7. **General Provisions.**
 - a. Non-Waiver. No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of this Agreement.
 - b. Severability. Should any provision of this Agreement be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired or affected.
 - c. Assignment or Delegation. Neither party may assign all or any portion of its rights and obligations in this Agreement without the express prior written approval of the other party, which approval may be withheld for any reason.

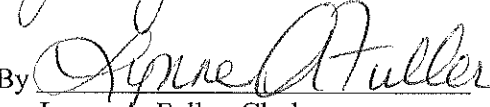
CITY OF MUSKEGON

By 
Stephen J. Warmington, Mayor

By 
Anne Marie Becker, Clerk

CITY OF NORTON SHORES

By 
Jerry Wiersma, Mayor

By 
Lynne A. Fuller, Clerk

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
McGraft Park Rd., Glenside to Addison**

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of McGraft Park Road from Glenside to Addison and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the federal funds of \$197,558 & \$49,390 of state funds (Local Jobs Today Grant) for a total grant of \$246,948. The estimated total construction cost, without engineering, is \$286,100. The engineering cost is estimated at an additional 15% of the construction cost.

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street fund as will appear in the 2008 budget.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION #2007-54(j)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF McGRAFT PARK ROAD FROM GLENSIDE TO ADDISON TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR THE MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN MARIE BECKER TO EXECUTE SAID CONTRACT

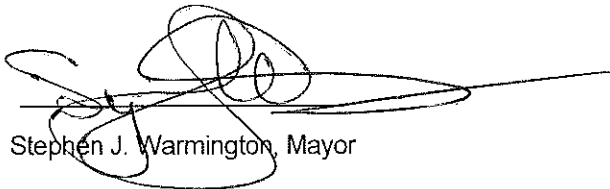
Moved by Commissioner Davis and supported by Commissioner Carter that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **07-5303** between the Michigan Department of Transportation and the City of Muskegon for the reconstruction of McGraft Park Road within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **07-5303** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

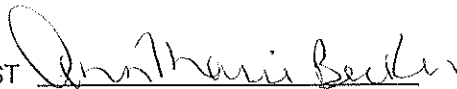
Adopted this 26th day of June, 2007.

BY



Stephen J. Warmington, Mayor

ATTEST



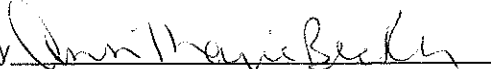
Ann Marie Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on June 27, 2007. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By



Ann Marie Becker, City Clerk

(ADVANCE CONSTRUCTION CONTRACT)
STP & LJT

CAB

Control Section	STUL 61407
Job Number	84370
Project	STP 0761(018)
Federal Item No.	RR 5750
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	07-5303

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of AUG 08 2007, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated May 22, 2007, attached hereto and made a part hereof:

Reconstruction work along McGraft Park Road from Glenside Boulevard to Addison Street; including pavement removal, concrete sidewalk, sidewalk ramps, aggregate base, hot mix asphalt paving, and pavement marking work; and all together with necessary related work.

WITNESSETH:

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

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

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

- A. Design or cause to be designed the plans for the PROJECT.
- B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.
- C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

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

5. The PROJECT COST shall be met in part by contributions by the State Local Jobs Today Program and the REQUESTING PARTY.

State Local Jobs Today Grant Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed \$49,390. The balance of the PROJECT COST, after deduction of State Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Contingent upon availability of Federal Funds and Federal approval, Federal Surface Transportation Funds, for future fiscal years, may be applied to the cost incurred as advance construction in an amount such that the Federal Surface Transportation Funds equal a participation ratio of 80 percent up to an amount not to exceed \$197,558.

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

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

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

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

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

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

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

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

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

10. Both the REQUESTING PARTY and the DEPARTMENT certify that the DEPARTMENT is not a person liable under Parts 201 and 213 of the NREPA; that the DEPARTMENT is not an owner or operator of any property within the PROJECT limits; that the DEPARTMENT has not arranged for the disposal of hazardous substances within the PROJECT

limits, nor has the DEPARTMENT transported any hazardous substances to the PROJECT limits; that the DEPARTMENT has not conducted any activities which have resulted in a release or threat of release of hazardous substances at the facility or within the PROJECT limits and that the DEPARTMENT is otherwise not liable for any response activities or response activity costs at the facility.

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

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

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

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

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

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

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

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

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

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

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

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owners protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

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

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

CITY OF MUSKEGON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By [Signature]
Title: Stephen J. Warmington
Mayor

By [Signature]
Department Director MDOT

By [Signature]
Title: Ann Marie Becker
City Clerk

6/1/07
je
ASSISTANT
ATTORNEY
GENERAL

WCS
REVIEWED
5-25-07
CORRECTIONAL

May 22, 2007

EXHIBIT I

CONTROL SECTION	STUL 61407
JOB NUMBER	84370
PROJECT	STP 0761(018)

ESTIMATED COST

CONTRACTED WORK

Estimated Cost	\$286,100
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COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$286,100
Less State Local Jobs Today Grant Funds*	<u>\$ 49,390</u>
Balance	\$236,710

Less State Local Jobs Today Program Loan/Federal Funds (Advance Construction) Future Fiscal Year**	<u>\$197,558</u>
REQUESTING PARTY'S SHARE (Future Fiscal Year)	\$ 39,152

*State Local Jobs Today Grant Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed \$49,390.

**Contingent upon availability of Federal Funds and Federal approval, Federal Surface Transportation Funds, for future fiscal years, may be applied to the cost incurred as advance construction in an amount such that the Federal Surface Transportation Funds equal a participation ratio of 80 percent up to an amount not to exceed \$197,558.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
 - 1. Engineering
 - a. FAPG (6012.1): Preliminary Engineering
 - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
 - c. FAPG (23 CFR 635A): Contract Procedures
 - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 2. Construction
 - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
 - b. FAPG (23 CFR 140B): Construction Engineering Costs
 - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
 - d. FAPG (23 CFR 635A): Contract Procedures
 - e. FAPG (23 CFR 635B): Force Account Construction
 - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement
 - g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

- h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
 - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
 - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by twenty percent (20%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

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

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

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$25,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

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

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

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

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

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

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

The agency shall submit two copies of:

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

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

b. Agencies expending less than \$300,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

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

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

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

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

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).
5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

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

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

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

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

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

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

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

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

Date: June 26, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Request for Encroachment Agreement
Lighted Sign on Pine St.

SUMMARY OF REQUEST:

Bakker Auto Trim at 90 Hartford Ave. has submitted the attached encroachment agreement form requesting your permission to install a lighted sign on their building which will encroach over the sidewalk on Pine St. for approximately 18".

FINANCIAL IMPACT:

None

ACTION SHEET

Nays	Ayes	Action	Name
	☒		Commissioner Wierengo
			Commissioner Carter
			Commissioner Davis
			Mayor Gawron
			Commissioner Shepherd
			Commissioner Spataro
			Mayor Warmington

out for sig.

lighted sign on pine st.

2007-54 L

CITY OF MUSKEGON
ENCROACHMENT PERMIT AGREEMENT

2007-54(1)

REQUEST: A one-hundred dollar (\$100.00) non-refundable fee is required for processing of request.

1. LICENSEE proposes to install, repair or maintain improvements or facilities ("the encroachment"), in or abutting a street, alley, sidewalk, park, terrace or other property controlled or owned by the City of Muskegon, the encroachment being described as: (Attach exhibits) (1 unit equals 0.99 lineal feet)

Install Lit Sign (2way) 18" Approx
to encroach sidewalk

2. The City-owned or controlled property (herein "property") subject to the encroachment is described as: [please insert a general description, and if required by the CITY, an accurate legal description]

city Sidewalk - Pine Street Side

3. The CITY is willing to grant such privilege upon the terms and conditions herein. This agreement shall constitute a permit under Chapter 74 of the Code of City Ordinances, and with all future amendments shall apply to any encroachment on public right of way or property.

PERMIT AGREEMENT:

THIS AGREEMENT is made and entered into this 26th day of June 2007, by and between the CITY OF MUSKEGON, a municipal corporation (hereinafter called CITY), and Bakker
Auto Trim (hereinafter called LICENSEE).

THEREFORE,

1. CITY does hereby grant unto LICENSEE the privilege of constructing, installing, maintaining, repairing and performing all necessary functions relating to the encroachment, and for that purpose to enter the property, for the term herein stated. This privilege shall be effective upon the delivery to the CITY of the required evidence of insurance coverage as outlined in paragraph 4 under this section and only after approval of this agreement by the City Commission and at which time an encroachment permit will be issued.

This grant is subject to the following special conditions: _____

2. That LICENSEE shall pay to the CITY for the privilege hereby granted the sum of _____ Dollars (\$ _____), per unit as described under Request, paragraph 1, applicable to the current Master Fee Resolution. Such payment is to be made upon the signing of this agreement to the City of Muskegon, and the privilege hereby granted shall continue for a period of five years from said date and renewal payment as set in the Master Fee Resolution to continue in five year intervals due on the first day of May unless sooner terminated as hereinafter provided.

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

4. INSURANCE. LICENSEE shall at all times carry liability insurance in such amounts as are satisfactory to CITY, and issued by companies acceptable to the CITY, licensed in the State of Michigan, naming CITY as an additional insured on any such policy. LICENSEE will file yearly with the CITY certificates or policies evidencing such insurance coverage. The insurance policies or certificates shall provide that the CITY shall be given thirty days written notice before a cancellation or change in coverage may occur. The types of coverage and coverage limits as required by City Engineer shall be as follows:

5. BONDING. Before this agreement permit becomes valid, LICENSEE shall file with the CITY a bond conforming to the requirements of all applicable ordinances, and to cover removal of said encroachment in part or whole, if essential for CITY to do so. This Bond shall keep same in force during the entire term of this agreement.

6. The privilege hereby granted may be canceled and revoked in part or whole by the CITY at any time upon giving said LICENSEE thirty (30) days of written notice of such cancellation and revocation, with no refund of the fee required in paragraph 2 of Permit Agreement.

7. LICENSEE may surrender up the privilege hereby granted at any time upon giving notice in writing to the CITY thirty (30) days prior to such surrender with no refund of the fee required in paragraph 2 of Permit Agreement; provided, however, that upon the voluntary relinquishment or abandonment of this privilege, or upon cancellation or revocation thereof by the CITY, the LICENSEE shall remove any structure(s) erected upon, within or overhanging the area of encroachment and restore the property at LICENSEE'S expense and in

a manner satisfactory to the CITY and in default thereof shall be liable to the CITY for any cost, damage or expense the CITY may sustain in such restoration.

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

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

Witnesses:

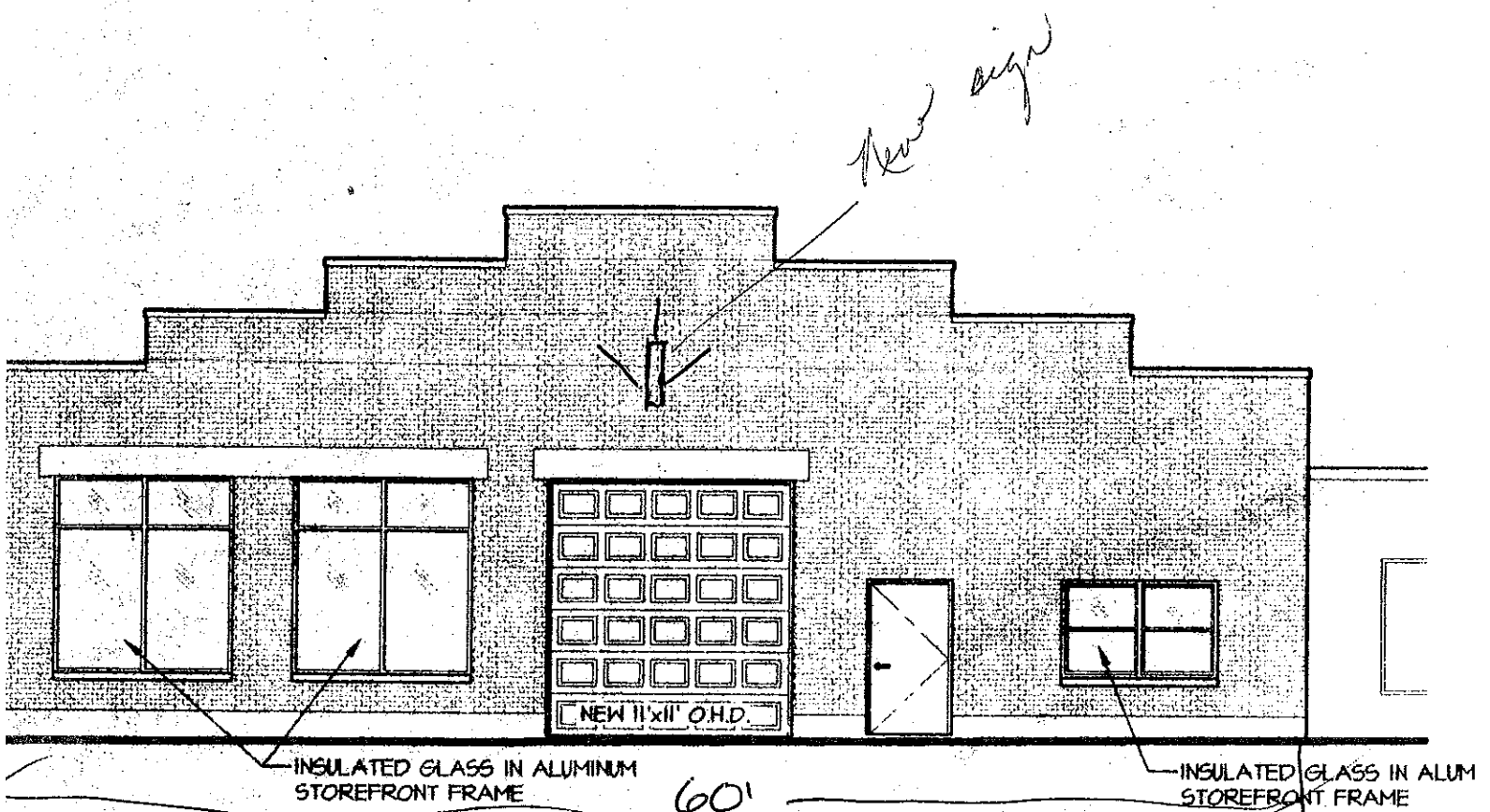
Linda Potter
Linda Potter

CITY OF MUSKEGON

By Stephen J. Warmington Mayor

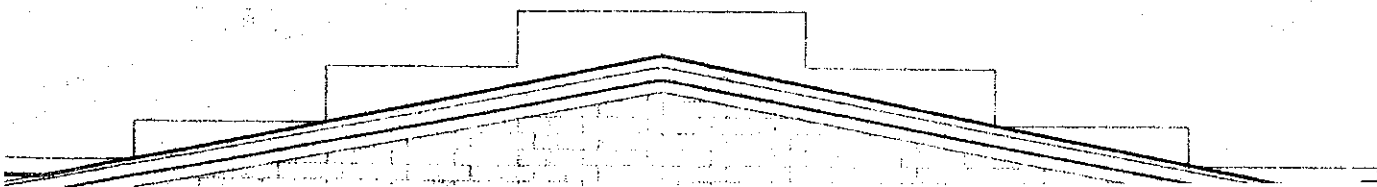
And Annmarie Beck
Annmarie Beck, Clerk

LICENSEE:

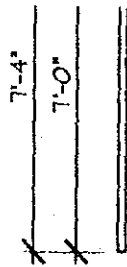


OUTH BUILDING ELEVATION (pine st)

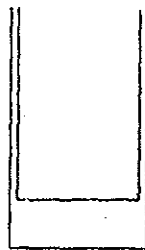
LE: 1/8" = 1'-0"



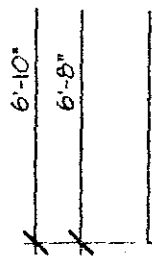
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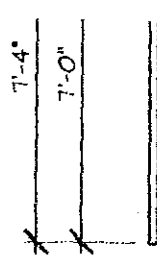
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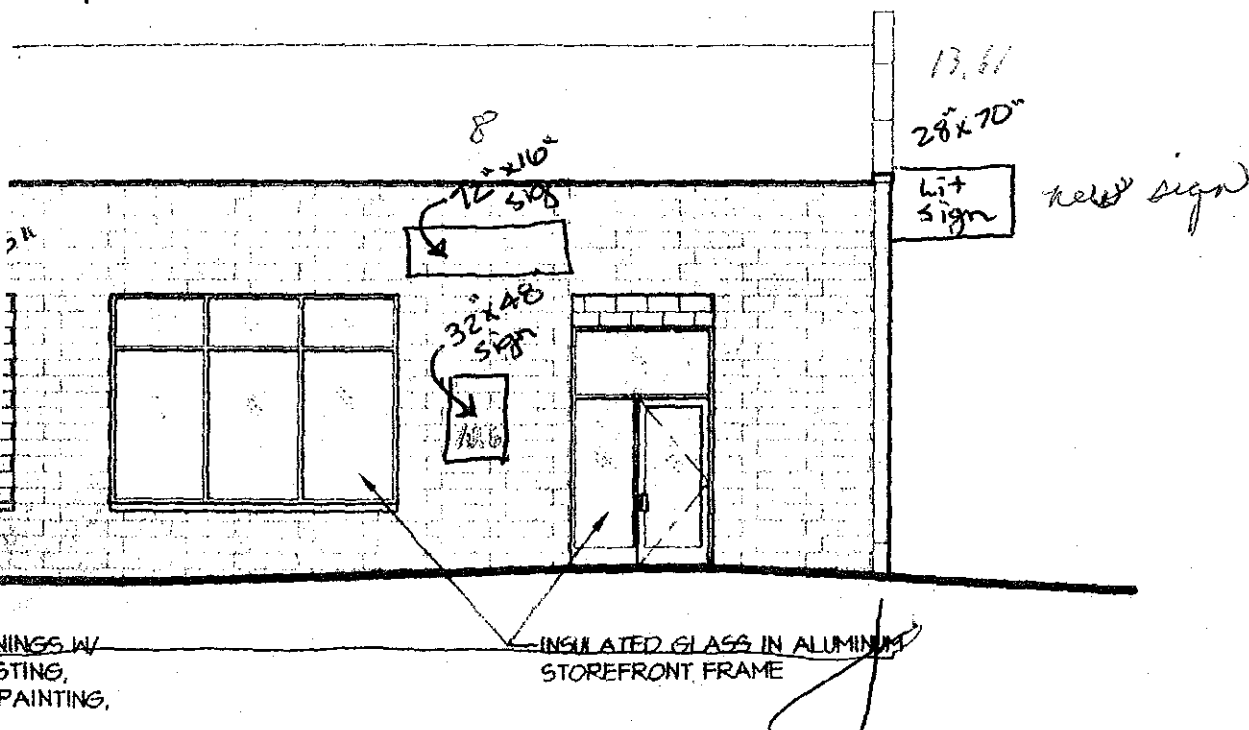
FRAME TYPE B



FRAME TYPE C



cept Pine St Sign



GRAB
BAR

I
5

BAKKER AUTO & MARINE TRIM, INC.

2485 Holton Rd.
Muskegon, MI 49445

FIFTH THIRD BANK
WESTERN MICHIGAN
GRAND RAPIDS, MI 49503

74-5/724

2527

PAY TO THE
ORDER OF

City of Muskegon

6-20-07

\$ 194.75

DOLLARS

One hundred - Ninety four and 75/100

MEMO

Encroachment Fee/sign permit

[Signature]

⑈002527⑈ ⑆072400052⑆ 7161547810⑈

BAKKER AUTO & MARINE TRIM, INC.

2527

Filing

BAKKER AUTO & MARINE TRIM, INC.

2527

RECEIPT

DATE	6-20-07	No.	247886
RECEIVED FROM	Kris Thorsen		\$94 ⁷⁵
Ninety-four and ⁷⁵ / ₁₀₀			DOLLARS
☐ FOR RENT	101-00000-4208 #42		
☐ FOR			
ACCOUNT		☐ CASH	FROM TO
PAYMENT		☐ CHECK	BY Sam White
BAL. DUE		☐ MONEY ORDER	

1182

RECEIPT

DATE	6/20/07	No.	741256
RECEIVED FROM	Bakker Auto Store		\$100.00
One hundred and ⁷⁰ / ₁₀₀			DOLLARS
☐ FOR RENT	Exchocement request @ 860 Pine St		
☒ FOR	ck # 2527		
ACCOUNT		☐ CASH	FROM TO
PAYMENT	100 00	☒ CHECK	BY E. Hoffman
BAL. DUE		☐ MONEY ORDER	

1182

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: June 19, 2007

RE: Jurisdictional Transfer with Michigan Department of Transportation

SUMMARY OF REQUEST:

To approve the Memorandum of Understanding (MOU) with the Michigan Department of Transportation (MDOT) for the jurisdictional transfer of the current US 31 Business Route (Muskegon and Webster Avenues) to the City and transfer Shoreline Drive to MDOT, and authorize the Mayor to sign the MOU. When this transfer transaction is complete, it will enable Shoreline Drive to become the business route and will return Muskegon and Webster Avenues to residential streets.

FINANCIAL IMPACT:

Remaining Build Michigan III grant funds will be available to the City to fund eligible street work.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the MOU and the attached resolution authorizing the Mayor to sign the MOU.

COMMITTEE RECOMMENDATION:

None.

RESOLUTION
CITY OF MUSKEGON
2007-55(a)

Resolution for Jurisdictional Transfer of US-31 Business Route, northbound and southbound to the City of Muskegon and the Jurisdictional Transfer of Shoreline Drive to MDOT

WHEREAS, the City of Muskegon is interested in the public welfare, safety and economic development of the community, and

WHEREAS, the City of Muskegon is in support of assuming jurisdictional control of US-31 Business Route, northbound/Muskegon Avenue (from 50 feet southwest of the centerline of Ninth Street to a point 0.263 miles northeast of the centerline of Spring Street, for a total segment distance of 1.29 miles) and US-31 Business Route, southbound/Webster Avenue (from 50 feet southwest of the centerline of Ninth Street, to a point 0.168 miles northeast of the centerline of Spring Street, for a total segment distance of 1.21 miles) from MDOT, thereby making Muskegon and Webster City Streets, and

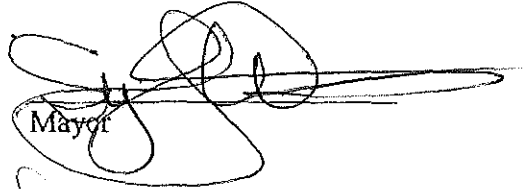
WHEREAS, the City of Muskegon is in support of transferring jurisdictional control of both directions of Shoreline Drive (beginning at the US-31 Business Route/Seaway Drive, northerly and easterly to the US-31 Business Route/Skyline Drive, for a total distance of approximately 1.70 miles) to MDOT

NOW THEREFORE, BE IT RESOLVED that the City of Muskegon authorizes Stephen Warmington, Mayor to sign the Memorandum of Understanding relating to these transfers.

Signed this 26th day of June, 2007.

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

Nays: None

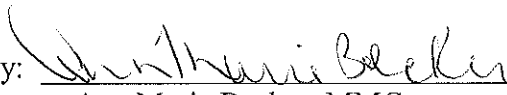

Mayor


Clerk

CERTIFICATION
2007-55(a)

This resolution was adopted at a regular meeting of the City Commission, held on June 26, 2007. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By: 
Ann Marie Becker, MMC
City Clerk

MEMORANDUM OF UNDERSTANDING
BETWEEN
MICHIGAN DEPARTMENT OF TRANSPORTATION
AND
CITY OF MUSKEGON

I. PURPOSE

This Memorandum of Understanding is entered into this date of _____ between the Michigan Department of Transportation (MDOT) and the City of Muskegon (CITY) for the purpose of transferring jurisdiction of the road segments described in Part I of Attachment A, dated May 2, 2007, from MDOT to the CITY, said road segments hereinafter referred to as the "PART I ROAD SEGMENTS," and for the purpose of transferring jurisdiction of the road segments described in Part II of Attachment A, dated May 2, 2007, from the CITY to MDOT, said road segments hereinafter referred to as the "PART II ROAD SEGMENTS." This Memorandum of Understanding will begin upon award and will remain in effect unless it is modified according to Section V below.

II. BACKGROUND

The PART I ROAD SEGMENTS are within the CITY boundaries and are no longer functioning as a state trunklines. MDOT is willing to transfer jurisdictional control of the PART I ROAD SEGMENTS to the CITY, and the CITY is willing to accept jurisdictional control of the PART I ROAD SEGMENTS. The transfer of jurisdictional control of the PART I ROAD SEGMENTS will make these roadways City Major Streets.

The PART II ROAD SEGMENTS provide a state trunkline function in that they connect to and maintain continuity for the existing state trunkline system. The CITY is willing to transfer jurisdictional control of the PART II ROAD SEGMENTS to MDOT, and MDOT is willing to accept jurisdictional control of the PART II ROAD SEGMENTS. The transfer of jurisdictional control of the PART II ROAD SEGMENTS will make these roadways state trunklines.

MDOT and the CITY currently have in force a Municipal Trunkline Maintenance Contract for portions of the state trunkline located within the Muskegon city boundaries.

III. AGREEMENT

Upon award and acceptance of this Memorandum of Understanding by both parties, the parties agree to the following:

A. MDOT agrees:

1. To transfer jurisdictional control of the PART I ROAD SEGMENTS to the CITY, and the CITY agrees to accept jurisdictional control of the PART I ROAD SEGMENTS, thereby making these roadways City Major Streets.
2. To assume full jurisdictional control of the PART II ROAD SEGMENTS, thereby making these roadways state trunklines.
3. To accept maintenance responsibility and perform maintenance for the PART II ROAD SEGMENTS for which jurisdictional control is transferred to MDOT by this Memorandum of Understanding.
4. To pursue modification of the current Municipal Trunkline Maintenance Contract to reflect this Memorandum of Understanding.

B. The CITY agrees:

1. To transfer jurisdictional control of the PART II ROAD SEGMENTS to MDOT, and MDOT agrees to accept jurisdictional control of the PART II ROAD SEGMENTS, thereby making these roadways state trunklines.
2. To assume full jurisdictional control of the PART I ROAD SEGMENTS, thereby making these roadways City Major Streets.
3. To accept maintenance responsibility and perform maintenance for the PART I ROAD SEGMENTS for which jurisdictional control is transferred to the CITY by this Memorandum of Understanding.
4. To assume responsibility, costs, and liability for the maintenance and operation and all future modifications required of the irrigation system that was constructed along the PART II ROAD SEGMENTS.
5. To assume all responsibility for culvert maintenance and all future costs related to Ryerson Creek along the PART I ROAD SEGMENTS.

6. To assume responsibility for providing new business information or advertising signs for the PART II ROAD SEGMENTS. If any existing signs are required to be moved, they will be moved by the CITY and will be paid for by the CITY as previously agreed upon in MDOT Contract No. 2002-0672, attached hereto as Attachment B.
- C. The parties agree that the CITY will maintain the remainder of the State Build Michigan III Funds granted to the CITY as provided in MDOT Contract No. 02-5019, attached hereto as Attachment C, and as subsequently amended, said funds hereinafter referred to as the "GRANT." The parties agree that the GRANT was issued by the State of Michigan for the reconstruction and restoration of the PART II ROAD SEGMENTS. The GRANT remainder will be maintained and expended by the CITY in accordance with the requirements of Act 51, Public Acts of 1951, Section 13, as amended.
- D. The parties agree that no additional funding beyond the GRANT will be paid to the CITY by MDOT for the jurisdictional transfer of the PART I ROAD SEGMENTS and/or the PART II ROAD SEGMENTS.
- E. Unless otherwise addressed by this Memorandum of Understanding, both parties agree that the transfer of jurisdictional control of the PART I ROAD SEGMENTS from MDOT to the CITY and the transfer of jurisdictional control of the PART II ROAD SEGMENTS from the CITY to MDOT will include the transfer of utility, operational, drive or right-of-way usage, and drainage permits, whether recorded or otherwise; all bridges, culverts, signs, signals, and/or other structures or traffic control devices; and any and all features and appurtenances now existing for highway purposes on and along the PART I ROAD SEGMENTS and the PART II ROAD SEGMENTS.
- F. The parties agree that the jurisdictional transfer of the PART I ROAD SEGMENTS are subject to the provisions of Act 296, Public Acts of 1969, Section 2. The parties agree that the PART I ROAD SEGMENTS are not in need of renovation, repair, and/or reconstruction, pursuant to Act 296, Public Acts of 1969, Section 2.

IV. TERM

This Memorandum of Understanding will take effect upon award and will remain in effect unless it is modified according to Section V below.

V. MODIFICATION

This Memorandum of Understanding may be modified, in writing, upon the mutual agreement of the parties. Any modification must be signed by the authorized representative of each agency or his/her designee.

VI. SIGNATURE

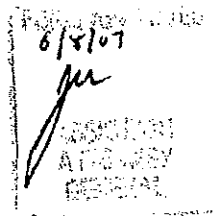
This Memorandum of Understanding is entered into upon signing by the duly authorized officials for the CITY and for MDOT.

CITY OF MUSKEGON

Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

Title: Director
Michigan Department of Transportation



ATTACHMENT A

May 2, 2007

Part I

ROADWAY SEGMENTS proposed for Transfer from MDOT to the CITY, to become City Major Streets:

US-31 Business Route, northbound/Muskegon Avenue, from a point 50 feet southwest of the centerline of Ninth Street, northeasterly to a point 0.263 miles northeast of the centerline of Spring Street, said point being approximately 150 feet south of northbound Shoreline Drive, for a total segment distance of approximately 1.29 miles, in control sections 61151 and 61153;

US-31 Business Route, southbound/Webster Avenue, from a point 50 feet southwest of the centerline of Ninth Street, northeasterly to a point 0.168 miles northeast of the centerline of Spring Street, said point being approximately 100 feet south of northbound Shoreline Drive, for a total segment distance of approximately 1.21 miles, in control sections 61151 and 61153;

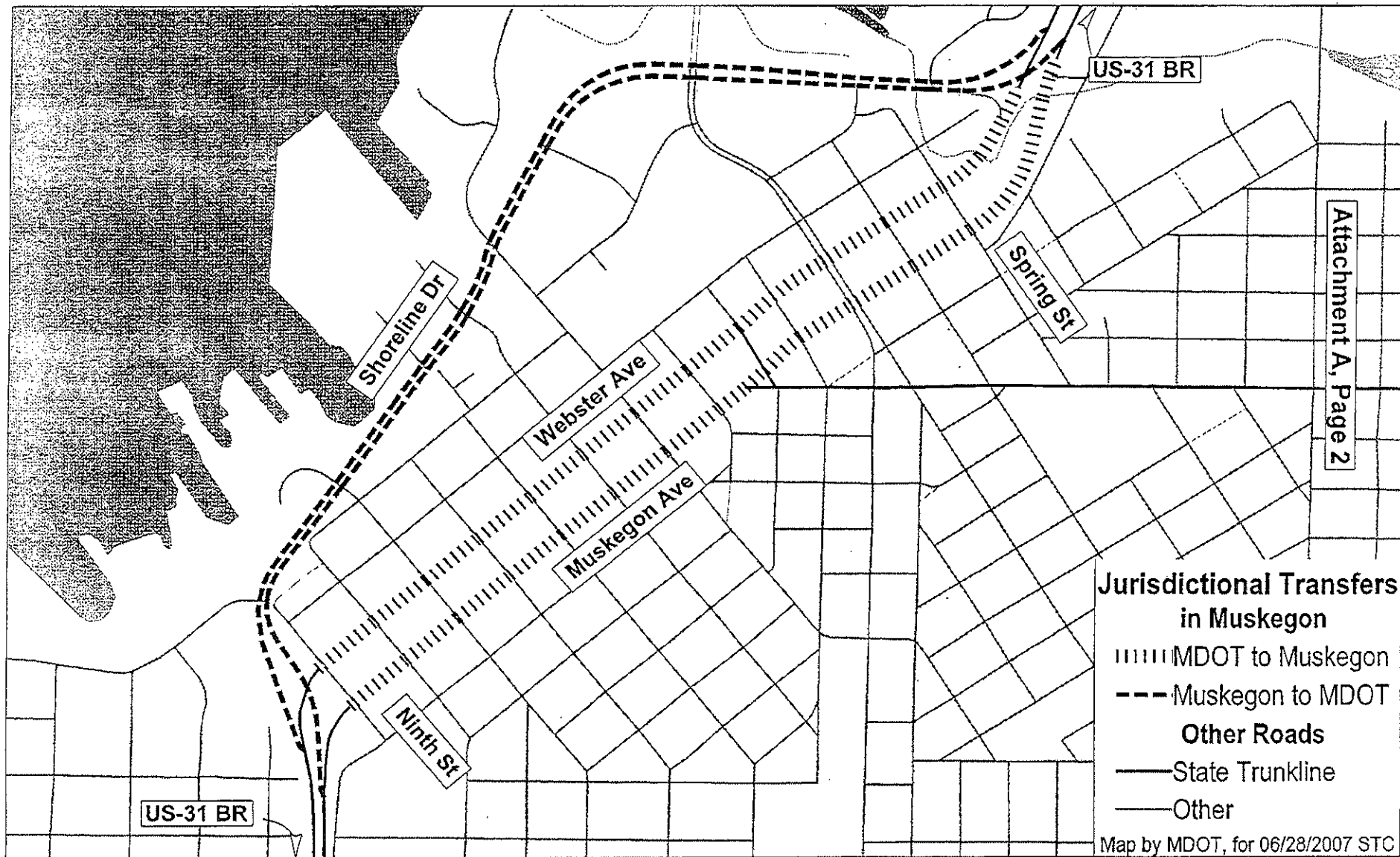
Comprising a grand total distance of approximately 2.50 miles.

Part II

ROADWAY SEGMENTS proposed for Transfer from the CITY to MDOT, to become state trunkline:

Both directions of Shoreline Drive, a divided highway facility, beginning at the US-31 Business Route/Seaway Drive, a divided highway facility; thence northerly and easterly to the US-31 Business Route/Skyline Drive, a divided highway facility, for a total distance of approximately 1.70 route miles.

NOTE: Page 2 of this Attachment A is a map which depicts the locations of the road segments described above.



Attachment B

MDOT NO. 2002-0672
AGENDA: DAB

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF MUSKEGON

AGREEMENT

- WHEREAS, The City of Muskegon (the City) and the Michigan Department of Transportation (MDOT), are jointly developing these roadway jurisdictional transfers; and
- WHEREAS, the City has jurisdiction over Shoreline Drive from Southern Avenue to Terrace Street; and
- WHEREAS, The City shall construct a new segment of Shoreline Drive (Shoreline Dr. Extension) from Terrace Street to Business US-31 (US-31BR), as well as reconstruct and/or rehabilitate the existing segment between Southern Avenue and Terrace Street (see attached map); and
- WHEREAS, US-31BR, from south of Ninth Street to north of Eastern Street, are a pair of one-way State Trunklines under the jurisdiction of MDOT; and
- WHEREAS, the City and MDOT will exchange jurisdiction of the aforementioned streets upon completion and acceptance of construction, reconstruction, and/or rehabilitation of Shoreline Drive, as described above, and per the conditions described in this Agreement, and this transfer will be done under a separate agreement at that time.

NOW, THEREFORE, the City and MDOT agree as follows:

1. The City shall acquire the necessary property at its expense, and complete environmental mitigation as required by the Phase II Environmental Review and by federal and state regulations, and obtain MDOT approval of the required environmental clearance issues, prior to and during construction. If additional costs are incurred during project construction, for either the Shoreline Drive Extension or the existing Shoreline Drive roadway, due to hazardous contaminated material disposal and/or other environmental issues, the City is required to pay 100% of the additional excavation costs, beyond that which would normally be classified as normal non-hazardous and/or non-hazardous contaminated material excavation, as it relates to all disposal, handling and mitigation for the Shoreline Drive Extension, as described above and on the attached map.
2. The City shall arrange for completion of design plans, engineering, and construction including construction engineering (CE) of the Shoreline Drive Extension as described herein, upon MDOT review and approval of final design plans; the City shall advertise, let, and award the project to the lowest bidder; MDOT also shall approve construction staging, in coordination with other Muskegon area projects to minimize impacts on the users of the system. The City will be reimbursed for construction costs for the project through the transfer of state Build Michigan III funds to the City; specific terms and conditions of the

Fund transfer shall be addressed by separate agreement between the City and MDOT. The following items shall be the respective responsibilities of the City and MDOT:

- a. MDOT shall provide Build Michigan III funds not to exceed \$11,850,000 for the following predetermined, eligible items within the limits of the Shoreline Drive Extension project and the reconstruction and rehabilitation of the existing section between Terrace Street and existing US-31BR (Southern Avenue): roadway construction, roadway reconstruction, roadway rehabilitation, PE for the portion of existing Shoreline Drive, CE, railroad relocation, standard traffic signals, street-lighting replacement, public utility pole relocation, relocation of existing public utility service (as per MDOT guidelines for utility relocations), with the following exceptions as listed in Items 2b, 2c, and 8 below;
 - b. The City shall provide the following items, including required audits, related to the Shoreline Drive at its expense: street-lighting operations and maintenance, including utility billings; all sanitary force-main modifications and/or upgrades resulting from existing condition defects; non-motorized trail construction and all future maintenance; expansion and upgrades of existing utility service beyond existing facilities unless replaced as a direct conflict to the new construction (all cost associated with replacement of existing utilities, due to age of the facility, will be shared evenly by MDOT and the City and all upgrades to replaced utilities will be at 100% city cost); and design engineering and environmental clearance per previous agreements, including mitigation and cleanup of any additional environmental issues discovered during the life of the construction project. MDOT shall have no responsibility for sanitary sewer force-main and its existing condition. The City shall be responsible for all needed sanitary sewer upgrades, and to assure its structural integrity for the Shoreline Drive Extension.
 - c. Local road (such as Western Avenue) modifications, outside the agreed limits of direct tie-ins to the Shoreline Drive, shall be the responsibility of the City.
 - d. The City shall be responsible for the design of the reconstruction project (as approved by MDOT) on existing Shoreline Drive, from Fourth Street to Terrace Street. In addition, the City shall be responsible for the design of the rehabilitation project (as approved by MDOT) on existing Shoreline Drive, from existing US-31BR (north of Southern Avenue) to Fourth Street. The two segments mentioned in this section shall be done separately from the Shoreline Drive Extension construction project, but shall also be included in the Build Michigan III funding, with MDOT approval. This portion of the Build Michigan III funding will be part of the total funding limit mentioned in section "a" and any additional costs for these projects will be at 100% City of Muskegon costs - per agreement).
3. The City shall obtain MDOT approval of final design plans and environmental mitigation plans prior to contract letting for construction, reconstruction, and rehabilitation of the Shoreline Drive project. The City will arrange for advertising, letting, CE, construction of the Shoreline Drive, designing, rehabilitation, and reconstruction of the existing Shoreline Drive from Terrace Street to Southern Avenue, and will be reimbursed with Build Michigan III funds, per Item #2a above. It is further agreed that the City shall either perform the above noted work or award the same to the lowest bidder.

Upon the completion of the Shoreline Drive Extension as described herein, and upon completion of existing Shoreline Drive Improvements as described in Item #2 above, and acceptance of these projects by MDOT, the City will transfer jurisdictional control of Shoreline Drive, from south of Ninth Street to north of Eastern Avenue (MP to be assigned), to MDOT to be a State Trunkline, designated as a segment of the US-31BR, under a separate agreement.

5. The City shall, as long as the contract is in place for such procedures, perform trunkline highway maintenance of Shoreline Drive, for which jurisdictional control will be transferred to MDOT under a separate agreement, and receive reimbursement from the State for such maintenance in accordance with the duration, terms, and conditions of its existing Municipal Trunkline Maintenance contract, and in accordance with any future Municipal Trunkline Maintenance Contract as renewed and agreed upon by the City and MDOT.
6. MDOT arranged for rehabilitation, at its expense, of US-31BR from near Southern Avenue to north US-31 during 1999. MDOT also made repairs on southbound US-31BR at Spring Street and on northbound US-31BR between Eighth and Ninth Streets; this project was completed and accepted by MDOT in 1999, per contract 61153 / 45782.
7. Upon completion of the Shoreline Drive Extension and reconstruction/rehabilitation of existing Shoreline Drive as described herein, MDOT will transfer jurisdiction of US-31BR, which includes the one-way pair of Webster Avenue and Muskegon Avenue, from south of Ninth Street to north of Eastern Avenue (NB: South Spring Point of Ninth Street North to North Spring Point of Eastern Street - CS 61151 BMP = 5.796 EMP = 6.066 and CS 61153 BMP = 0.000 EMP 1.000; and SB: South Spring Point of Ninth Street North to approximately 500 feet South of Eastern Street CS 61151 BMP = 5.796 EMP 6.066 and CS 61153 BMP = 0.000 EMP 0.860), to the City, under a separate agreement. Upon completion of the transfer, the City shall have complete responsibility and authority over the referenced streets, including maintenance responsibility for these streets. MDOT will have no further maintenance responsibilities or obligations for these referenced streets. Upon transfer, the streets will become a part of the City's Street Plan and eligible for maintenance cost reimbursement under Act 51. A separate agreement to transfer jurisdiction will be initiated between the City and MDOT.
 - a. After the transfer of jurisdiction is completed, Right-of-Way (ROW) transfer will take place and will be done as an easement for highway purposes. This process will be initiated by MDOT and the City of Muskegon at a later date.
 - b. MDOT will not own fee ROW for existing Shoreline Drive or the Shoreline Drive Extension, but shall be in easement form for the above mentioned segments. As such, the City, not MDOT will be liable and responsible for all environmental and other issues related to all Shoreline Drive ROW. In the event MDOT is the fee owner of Muskegon and Webster, it shall convey ownership to the City. The respective environmental liabilities shall be governed by the laws of the State.
 - c. Liability and responsibility for the condition of the highway and streets under MCLA 691.1402 and the Liability Exemption Section of Part 201, ACT 451 (Section 20126) shall follow the transfers of jurisdiction, regardless of fee ownership. No liability under the highway exception to governmental immunity evidenced by that statute or any successor or amendment thereof shall remain with either party after

~~jurisdiction has been transferred.~~

8. Existing traffic and parking controls, including speed limits, parking regulations, truck restrictions, traffic signs and signals, and pavement markings (on the street segments defined, for which jurisdictional control will be transferred to MDOT), will be retained by MDOT after the jurisdictional transfer occurs under a separate agreement, so long as traffic operations are not negatively affected. Any future changes to the existing traffic controls, or placement of new controls or devices, and maintenance on these transferred streets within the City, will be done in consultation with the City, per existing MDOT procedures, policies, and agreements for trunkline routes within the City.

a. MDOT will participate in the cost of traffic signals which meet MDOT's current standards and as provided in the current signal maintenance agreements. Additional costs to provide decorative traffic signals shall be 100% paid by the City of Muskegon. The City of Muskegon will also be responsible for providing all replacement parts required for any and all decorative traffic signals, within this Shoreline Drive corridor.

b. MDOT will not participate in the cost of placing new business informational or advertising signs as part of the Shoreline Drive Extension or existing roadway projects as described herein. If any existing signs are required to be moved, they will be moved by the City and shall be paid for by the City.

9. In accordance with MDOT's guidelines for public participation in planning such projects, MDOT and the City will jointly provide opportunities for public input and involvement before implementing any future major improvement projects on the street segments described herein, for which jurisdictional control will be transferred to MDOT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on this 4th day of Oct., 2002.

WITNESSES:

Linda Potter
Linda Potter

Margaret M. Platt
Margaret M. Platt

CITY OF MUSKEGON:

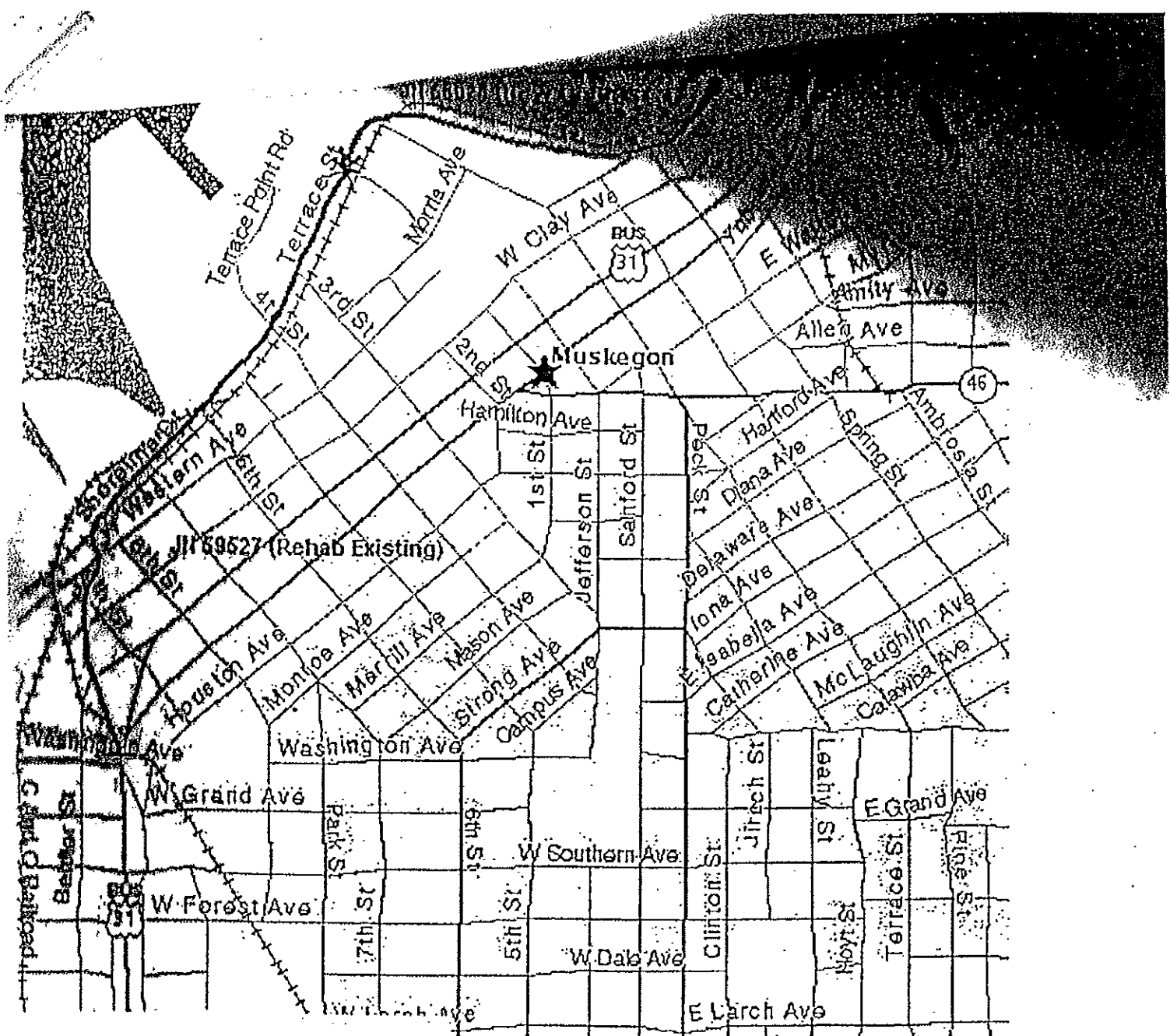
Steven Warmington
Steven Warmington, Mayor

Gail A. Kunder
Gail A. Kunder, Clerk

WITNESSES:

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION:

Walter M. ...
By:



Attachment C

RECEIVED
CITY OF MUSKEGON

APR 15 2002

BUILD MICHIGAN III
NON FED

CAB

Job Number 56028; 59527
Control Section MBS 61153; MBS 61151
Contract No. 02-5019

THIS CONTRACT is made and entered into this date of JUL 23 2002, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT;" and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY;" for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I," dated March 26, 2002, attached hereto and made a part hereof:

PART A - MBS 61153; JOB# 56028

New construction work for the Shoreline Drive Connector from Highway US-31BR to the existing Shoreline Drive at Terrace Street; and all together with necessary related work.

PART B - MBS 61151; JOB# 59527

Coldmilling and bituminous resurfacing work along Shoreline Drive from the existing Highway US-31BR northerly to Fourth Street and Pavement and removal and replacement work along Shoreline Drive from Fourth Street northerly to Terrace Street; and all together with necessary related work.

WITNESSETH:

WHEREAS, the State of Michigan is hereinafter referred to as the "State;" and

WHEREAS, the PROJECT has been approved for financing in part with State Build Michigan III Funds; and

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

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

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

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CITY OF MUSKEGON

JUL 09 2002

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the construction or reconstruction of the PROJECT, including the costs of preliminary engineering, plans, and specifications for the PART B portion of the PROJECT; physical construction necessary for the completion of the PROJECT; and engineering, legal, appraisal, financing, and any and all other expenses in connection with any of the above, except for those costs otherwise specified in this contract.

The costs incurred by the REQUESTING PARTY for preliminary engineering for the PART A portion of the PROJECT and right-of-way are excluded from the PROJECT COST as defined by this contract. The preliminary engineering performed by the REQUESTING PARTY for the PART A portion of the PROJECT work is covered by a separate contract (#95-0842 as amended by #00-5445) under job number 38765.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to perform, at no cost to the PROJECT, such administration of PROJECTS covered by this contract as is necessary to assist the REQUESTING PARTY to qualify for funding. Such administration may include performing such review, legal, financing, any other PROJECT related activities as are necessary to assist the REQUESTING PARTY in meeting applicable State requirements.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to ensure the PROJECT meets State requirements. Failure to comply with State requirements may result in forfeiture of future distributions of the Michigan Transportation Fund as described in Section 8. No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

4. The REQUESTING PARTY shall perform or cause to be performed all the PROJECT work. It is understood that portions or all of the PROJECT work will be placed under contract by the REQUESTING PARTY. The performance of the PROJECT work will be subject to the following conditions:

- A. The REQUESTING PARTY, at PROJECT COST, shall appoint a project engineer who shall oversee the PROJECT and ensure the PROJECT work is performed in accordance with this contract.
- B. The REQUESTING PARTY will design or cause to be designed the PROJECT and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT is for its own purposes and is not to nor does it relieve the REQUESTING PARTY of liability for any claims, causes of action or judgments arising out of the design of the PROJECT.

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

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

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

- D. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 201, MCL 339.2001; MSA 18.425(2001).
- E. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State laws, local ordinances, and State and local standards and regulations.
- F. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the contracting procedures to be followed by the REQUESTING PARTY in connection with the solicitation of the construction contract for the PROJECT shall be based on an open competitive bid process. It is understood that the proposal for the PROJECT shall be publicly advertised and the contract awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State statutes, local ordinances, and State and local regulations.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will comply with all applicable State statutes, local ordinances, and State and local regulations, including, but not limited to, those specifically relating to construction contract administration and obtain all permits and approvals with railway companies, utilities, concerned State, Federal, and local agencies, etc., and give appropriate notifications as may be necessary for the performance of work required for the PROJECT.

The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60 and 1996 PA 173, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

- H. The REQUESTING PARTY, at PROJECT COST, shall appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT.

Should the REQUESTING PARTY elect to use consultants for construction engineering and inspection, the REQUESTING PARTY shall provide a full-time project manager employed by the REQUESTING PARTY who shall ensure that the plans and specifications are followed.

- I. The REQUESTING PARTY shall provide all construction engineering and inspection necessary for the PROJECT; however, the DEPARTMENT may, at its own expense, provide a competent inspector. Said inspector, acting through the REQUESTING PARTY'S engineer, shall have the right to reject any or all portions of the work which are not executed pursuant to the plans and specifications.
- J. The REQUESTING PARTY shall require the contractor who is awarded the contract for the construction of the PROJECT to provide, as a minimum, insurance in the amounts specified in and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:
- (1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.

- (2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.
 - (3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.
- K. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work.
- L. The REQUESTING PARTY shall notify the DEPARTMENT:
- (1) Within thirty (30) days of the completion of preliminary engineering for the PART B portion of the PROJECT.
 - (2) Thirty (30) days prior to the anticipated opening of the PROJECT to traffic and certify that the PROJECT has been constructed in accordance with the PROJECT plans, specifications, and construction contract.

5. The PART A and B portions of the PROJECT COST shall be met by contributions by State Build Michigan III Funds. State Build Michigan III Funds shall be applied to the eligible items of the PART A and B portions of the PROJECT COST up to an amount not to exceed \$8,800,000 and \$3,050,000, the respective grant amounts. The balance, if any, of the PART A and B portions of the PROJECT COST, after deduction of State Build Michigan III Funds, is the sole responsibility of the REQUESTING PARTY.

Costs for PROJECT work performed by the REQUESTING PARTY that are eligible for payment under this contract will be based on the actual labor, material, and equipment supplied by the REQUESTING PARTY for the PROJECT and under the REQUESTING PARTY'S direct control. Costs for PROJECT work performed under subcontract with the REQUESTING PARTY that are eligible for payment under this contract will be based on the terms and conditions set forth in the formal written agreement between the REQUESTING PARTY and the subcontractor and approved by the DEPARTMENT as applicable.

It is understood that payment of costs is subject to cost criteria set forth in Section 4C and any changes in the scope of work for the PROJECT will require approval by the DEPARTMENT.

Upon receipt of the "Request for Payment Form" from the REQUESTING PARTY, the DEPARTMENT will authorize payment to the REQUESTING PARTY for one half of the eligible grant amounts upon execution of this contract and the balance of the eligible grant amounts six (6) months after execution of this contract.

6. The REQUESTING PARTY shall begin the performance of the PROJECT work within six (6) months of the execution of this contract and proceed with the PROJECT work in accordance with a reasonable schedule as agreed upon by all parties to this contract.

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

8. The REQUESTING PARTY shall establish and maintain adequate records and accounts relative to the cost of the PROJECT. Said records shall be retained for a period of three (3) years after completion of construction of the PROJECT and shall be available for audit by the DEPARTMENT. In the event of a dispute with regard to allowable expenses or any other issue under this contract, the REQUESTING PARTY shall continue to maintain the records at least until that dispute has been finally decided and the time after all available challenges or appeals of that decision has expired.

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

The REQUESTING PARTY shall submit to the DEPARTMENT certified costs for preliminary engineering for the PART B portion of the PROJECT within three (3) months of completion and shall make a final reporting of construction costs and all items of PROJECT COST related thereto within six (6) months of completion of the PROJECT.

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

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating

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

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

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 998-502 and applicable State laws and regulations relative to audit requirements.

9. The DEPARTMENT is entering into this contract to enable the REQUESTING PARTY to obtain and use funds provided by the State.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY of its exclusive jurisdiction of any of its highways and responsibility under MCL 691.1402, MSA 3.996(102).

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

10. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of any REQUESTING PARTY highway for purposes of MCL 691.1402; MSA 3.996(102). Exclusive jurisdiction of such highway for the purposes of MCL 691.1402; MSA 3.996(102) rests with the REQUESTING PARTY.

11. In addition to any protection afforded by a policy of insurance, the REQUESTING PARTY agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and all officers, agents, and employees thereof:

- A. From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and
- B. From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation, response and cleanup costs, and attorney fees or other related costs, arising out of, under, or by reason of the Agreement, including the design of the PROJECT, except claims resulting from the sole negligence or wilful acts or omissions of said indemnitee, its agents or employees.

The DEPARTMENT shall not be subject to any obligations or liabilities by contractors of the REQUESTING PARTY or their subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the REQUESTING PARTY shall take no action or conduct which arises either directly or indirectly out of its obligations, responsibilities, and duties under this contract, which results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission.

In the event that the same occurs, for the purpose of this contract, it will be considered as a breach of this contract thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including but not by way of limitation, a judgment for money damages.

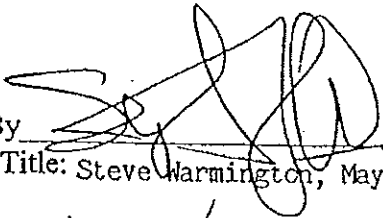
12. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, attached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

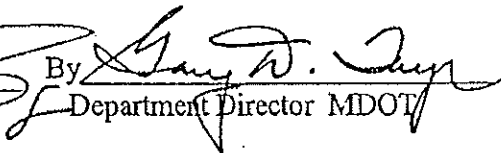
13. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective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

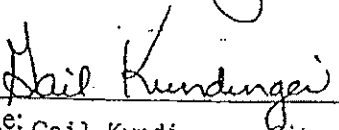
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

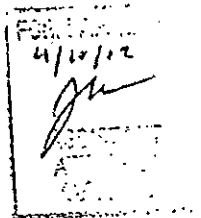
CITY OF MUSKEGON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By 
Title: Steve Warmington, Mayor

By 
Department Director MDOT

By 
Title: Gail Kunderger, City Clerk



APPROVED MICHIGAN
TRANSPORTATION
COMMISSION

4-25-02

APPROVED STATE
ADM. BOARD

5-7-02

March 26, 2002

EXHIBIT I

JOB NUMBER 56028; 59527
CONTROL SECTION MBS 61153; MBS 61151

ESTIMATED COST

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated PROJECT COST	\$8,800,000	\$3,050,000	\$11,850,000

ESTIMATED COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$8,800,000	\$3,050,000	\$11,850,000
Less State Build Michigan III Funds*	<u>\$8,800,000</u>	<u>\$3,050,000</u>	<u>\$11,850,000</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ -0-	\$ -0-	\$ -0-

NO DEPOSIT

*State Build Michigan III Funds for the PART A and B portions of the PROJECT are limited to \$8,800,000 and \$3,050,000, the respective grant amounts. PART A and B portions (funding amounts) can be modified with a future amendment to this agreement, with the total of PART A and PART B not to exceed \$11,850,000, as approved and processed by MDOT.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

Date: June 26, 2007

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Engineering Services Agreement for Engineering Services with Wade Trim

SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Wade Trim Inc. out of Grand Rapids to provide design, plans, specifications and bidding documents for the Muskegon & Webster conversion into two way streets. The scope of services consists of new traffic signals at 7th Street as well as signal modifications at Terrace Street for a total fee of \$18,600.

Wade Trim is being recommended for four main reasons:

- A- we already have a contract with them for two other projects, signal installation at Harvey & Marquette and traffic signals modifications along Laketon Ave. Corridor on which they have done an excellent job thus far.
- B- Wade Trim is the engineer that assembeled the conceptual plans of the conversirion and provided recommendations which had been reviewed by the downtown group and the state.
- C- The proposed fee of \$18,600 is very reasonable
- D- Deadline to meet the commuinity's desire to convert Muskegon & Webster into two way streets shortly after labor day of this year makes it difficult to slocit and review other proposals at this time.

FINANCIAL IMPACT:

The engineering fee of \$18,600 for the design and specifications plus construction engineering at an additional 15%.

BUDGET ACTION REQUIRED:

None, the cost is budgeted for.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Wade Trim Inc.

COMMITTEE RECOMMENDATION:



WADE TRIM

June 15, 2007

City of Muskegon
933 Terrace Street
PO Box 536
Muskegon, MI 49443-0536

Attention: Mr. Mohammed Al-Shatel, PE
City Engineer

Re: Preparation of Bidding Plans for the Muskegon/Webster Two Way Traffic Conversion
and the Seventh Street Traffic Signal Installations

Dear Mr. Al-Shatel:

Based on a review of our previously submitted two way traffic conversion plans, and our subsequent conversations, we have developed a scope of services to prepare a bid package for the Muskegon/Webster Two Way Traffic Conversion and the Traffic Signal Installations at Seventh Street and Muskegon Avenue and Seventh Street and Webster Avenue. The traffic signal installation plans and two way traffic conversion plans will be packaged together in order to save on both design and construction costs.

The bid package for the Muskegon/Webster Two Way Traffic Conversion and the Seventh Street Traffic Signal Installations will include the following:

- A title sheet
- A legend and construction notes sheet
- Traffic signal plan sheets for the four (4) intersections requiring full modernization:
 1. Seventh Street at Muskegon Avenue (Diagonal span)
 2. Seventh Street at Webster Avenue (Diagonal span)
 3. Terrace Street at Muskegon Avenue (Box span)
 4. Terrace Street at Webster Avenue (Box span)
- Simplified traffic signal plan sheets for the remaining thirteen (13) affected intersections along the Webster Avenue and Muskegon Avenue corridor
- Traffic signal detail sheets
- Two way traffic conversion signing and pavement marking plans

Wade Trim, Inc.	616.363.8181
2944 Fuller Avenue, N.E.	800.931.9135
Grand Rapids, MI 49505	616.363.5656 fax
	www.wadetrim.com

- Two way traffic conversion implementation plan sheet
- All necessary special provisions for construction
- Engineers estimate.

The City of Muskegon will provide survey for the four (4) intersections requiring full modernization, as listed above. This survey should be submitted electronically to Wade Trim, and will be used for the traffic signal base files.

The traffic signal plan sheets for the four (4) intersections requiring full modernization will include a removal plan, a removal wiring diagram, an installation plan, an installation wiring diagram, a materials list, span and wattage calculations, and utility coordination notes.

The simplified traffic signal plan sheets for the eleven (11) intersections requiring vehicle head and case sign replacements will include an intersection sketch, installation wiring diagram, a materials list, and span and wattage calculations.

The two way traffic conversion signing and pavement marking plans will detail measurement and pay items for the signing and pavement marking removal and installation. The conversion implementation plan will detail the implementation techniques and maintenance of traffic methods recommended for the two way traffic conversion on Muskegon Avenue and Webster Avenue.

Preliminary copies of the bid package will be provided for your review and comment. All comments and revisions will be incorporated into the final set of plans.

We propose to complete the services, as described above, for a not to exceed fee as detailed below:

- Part I – Preparation of Bidding Plans for the Muskegon/Webster Two Way Traffic Conversion, including the full traffic signal modernization at Terrace Avenue and Muskegon Avenue and Terrace Avenue at Webster Avenue: **\$12,600.**
- Part II – Preparation of Traffic Signal Installation Plans at Seventh Street and Muskegon Avenue and Seventh Street and Webster Avenue: **\$6,000.**

Both Part I and II will be packaged together for a total of **\$18,600.** Any additional services will be billed at our standard hourly billing rates.

If you have any questions regarding the above information, or wish to make changes to the scope of the project, please feel free to contact us at (616) 363-8181. We look forward to working with you on this project.

Very truly yours,

Wade Trim, Inc.



Jill N. Bosserd
Transportation Engineer



Terry A. Bartels, PE
Principal

JNB:TAB:alt
AAA8010.07N

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AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon Mazade, City Manager

DATE: June 22, 2007

RE: Liquor License Transfer, D & L of Michigan, LCC
435-441 W. Western Avenue

SUMMARY OF REQUEST:

Recommend approval to the Liquor Control Commission of a request from D & L of Michigan, LLC to transfer ownership of 2006 Class C Licensed Business with Dance Permit, located in escrow at 3621 Getty, Norton Shores, MI 49444, from North-Saylor, Inc.; transfer location to 435-441 W. Western Avenue, Muskegon MI 49440, Muskegon County; cancel existing Outdoor Service (1 area); requests a New SDM License to be held in conjunction; and requests a New Entertainment Permit and New Outdoor Service (1 area).

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Approve; final inspections are complete.

COMMITTEE RECOMMENDATION:

None.

Memo

To: Mayor Warmington & City Commissioners
From: Bryon L. Mazade, City Manager
Date: June 22, 2007
Re: Liquor License Request, D & L of Michigan, LCC, for
435-441 W. Western Avenue

You may recall that on January 23, 2007 the Commission recommended approval of this liquor license request, contingent upon final inspection.

In light of the contingency, the Liquor Control Commission requires City Commission recommendation upon completion of the final inspection. Final inspection was recently performed and was acceptable.

I am requesting the City Commission recommend approval of the request from D & L of Michigan, LLC to transfer ownership of 2006 Class C Licensed Business with Dance Permit, located in escrow at 3621 Getty, Norton Shores, MI 49444, from North-Saylor, Inc.; transfer location to 435-441 W. Western Avenue, Muskegon MI 49440, Muskegon County; cancel existing Outdoor Service (1 area); requests a New SDM License to be held in conjunction; and requests a New Entertainment Permit and New Outdoor Service (1 area).

/pb

2007-55(c)

RESOLUTION

At a Regular meeting of the City Commission
 (Regular or Special) (Township Board, City or Village Council)

called to order by Mayor Warmington on June 26, 2007 at 5:30 P.M.

The following resolution was offered:

Moved by Commissioner Spataro and supported by Commissioner Carter

That the request to TRANSFER OWNERSHIP OF 2006 CLASS C LICENSED BUSINESS WITH DANCE PERMIT, LOCATED IN ESCROW AT 3621 GETTY, NORTON SHORES, MI 49444, PO: MUSKEGON, MUSKEGON COUNTY, FROM NORTH-SAYLOR, INC. TO D & L OF MICHIGAN, LLC; TRANSFER LOCATION (GOVERNMENTAL UNIT) (MCL 436.1531(1) TO 441 W. WESTERN, MUSKEGON, MI 49440, MUSKEGON COUNTY; AND REQUEST A NEW ENTERTAINMENT PERMIT. ADDRESS IS 435 + 441 W. WESTERN.

be considered for Approval
 (Approval or Disapproval)

APPROVAL**DISAPPROVAL**

Yeas: 7
 Nays: 0
 Absent: 0

Yeas: _____
 Nays: _____
 Absent: _____

It is the consensus of this legislative body that the application be:

Recommended for issuance
 (Recommended or Not Recommended)

State of Michigan _____)

County of Muskegon _____)

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the City Commission at a Regular
 (Township Board, City or Village Council) (Regular or Special)

meeting held on June 26, 2007
 (Date)

SEAL

(Signed) Linda Potter
 (Township, City or Village Clerk)

933 Terrace, Muskegon MI 49440

(Mailing address of Township, City or Village)

933 Terrace Street
Muskegon, MI 49440

OFFICE 231-724-6705
FAX 231-724-4178

CITY OF MUSKEGON CLERK'S OFFICE

FAX COVER SHEET

To: Renee From: Linda

Fax: _____ Pages(including cover) 2

Phone: _____ Date: 6-27-07

Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Resolution approved by the
City Commission

Thanks,
Linda