# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JUNE 24, 2003

CITY COMMISSION CHAMBERS @ 5:30 P.M.

## AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **PRESENTATIONS:**
- **CONSENT AGENDA:**
  - a. **Approval of Minutes.** CITY CLERK
  - b. **City – MDOT Agreement for: Lincoln, Sherman to Lakeshore Drive.** ENGINEERING
  - c. **Fireworks Display – Commodores Concert.** CITY CLERK
  - d. **Change of Polling Place.** CITY CLERK
  - e. **Lakeshore Trail IV Bids.** LEISURE SERVICES
  - f. **FIRST READING: Zoning Ordinance Amendment for Banners.** PLANNING & ECONOMIC DEVELOPMENT
  - g. **Crisis Communications Plan.** PUBLIC RELATIONS COMMITTEE
- **PUBLIC HEARINGS:**
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**
  - a. **Approval of Resolution, Purchase Agreement and Quit Claim for the Sale of 850 Wood.** COMMUNITY & NEIGHBORHOOD SERVICES
  - b. **Acceptance of Purchase Agreement from the Muskegon Housing Commission.** COMMUNITY & NEIGHBORHOOD SERVICES AND INSPECTIONS
  - c. **Approval of Contract with A-1 Professional Construction.**

COMMUNITY & NEIGHBORHOOD SERVICES

d. **Veteran's Park Maintenance Agreement.** CITY MANAGER

e. **Vulnerability Assessment Proposal.** PUBLIC WORKS

f. **Rezoning Request for Properties Located Within 'Area 11'.** PLANNING & ECONOMIC DEVELOPMENT

g. **Industrial Facilities Tax Payment Agreement - Burgess-Norton.** CITY MANAGER

- **ANY OTHER BUSINESS:**

- **PUBLIC PARTICIPATION:**

> ***Reminder: Individuals who would like to address the City Commission shall do the following:***
> Be recognized by the Chair.
> Step forward to the microphone.
> State name and address.
> Limit of 3 minutes to address the Commission.
> (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

- **CLOSED SESSION:** To discuss pending litigation.

- **ADJOURNMENT:**

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

**Date:** **June 24, 2003**

**To:** **Honorable Mayor and City Commissioners**

**From:** **Gail A. Kundinger, City Clerk**

**RE:** **Approval of Minutes**

2003-60 a)

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SUMMARY OF REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, June 9, 2003; and the Regular Commission Meeting that was held on Tuesday, June 10, 2003.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

## JUNE 24, 2003

CITY COMMISSION CHAMBERS @ 5:30 P.M.

# MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30pm, Tuesday, June 24, 2003.

Mayor Warmington opened the meeting with a prayer from Vice Mayor Buie, after which members of the City Commission and members of the public joined in reciting the Pledge of Allegiance to the Flag.

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

Present: Mayor Stephen Warmington, Vice Mayor Karen Buie; Commissioners Stephen Gawron, William Larson, Robert Schweifler, Clara Shepherd and Lawrence Spataro; City Manager Bryon Mazade, City Attorney John Schrier and Deputy City Clerk Linda Potter.

**2001-50 CONSENT AGENDA:**

a. **Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, June 9, 2003, and the Regular Commisison Meeting that was held on Tuesday, June 10, 2003.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

b. **City - MDOT Agreement for: Lincoln, Sherman to Lakeshore Drive.** ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the milling and resurfacing as well as reconstruction of Lincoln St. between Sherman and Lakeshore Dr. and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is estimated at $353,000 but not to exceed 81.85% of eligible cost. The estimated total cost of the project, including the none participating items of engineering and water main, is $490,000.

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 was budgeted.

STAFF RECOMMENDATION: That the agreement and resolution be approved.

c. **Fireworks Display - Commodores Concert.** CITY CLERK

SUMMARY OF REQUEST: Management Associates, Inc. is requesting approval of a fireworks display permit for June 28, 2003 during the Commodores performance at the

Muskegon Summer Celebration. Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks. The insurance coverage has been approved.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

d. <u>Change of Polling Place.</u> CITY CLERK

SUMMARY OF REQUEST: The Muskegon Public Schools will be closing Froebel School that we are currently using for Precinct #4's polling place. We request permission to change the polling place to the Smith Ryerson Bldg., which is just down the hill from Froebel School.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

f. <u>FIRST READING: Zoning Ordinance Amendment for Banners.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2334 (Signs) of Article XXIII (General Provisions) of the City's Zoning Ordinance in order to permit banners under certain conditions.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

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

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their 6/12 meeting, with B. Mazade, J. Aslakson, B. Smith, and T. Harryman absent. The vote was unanimous.

g. <u>Crisis Communications Plan.</u> PUBLIC RELATIONS COMMITTEE

SUMMARY OF REQUEST: The Public Relations Committee and City Staff have reviewed the Crisis Plan and it is now ready to be adopted.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval

**Motion by Vice Mayor Buie, second by Commissioner Schweifler to approve the Consent Agenda with the exception of Item e.**

**ROLL VOTE: Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington**

**Nays: None**

***MOTION PASSED***

**2003-51 ITEMS REMOVED FROM CONSENT AGENDA**

e. <u>Lakeshore Trail IV Bids.</u> LEISURE SERVICES

SUMMARY OF REQUEST: To award the contract to the low bidder, Schultz Excavating, to construct phase IV of the Lakeshore Trail.

FINANCIAL IMPACT: $314,267

BUDGET ACTION REQUIRED: None, $375,000 was budgeted with 80% coming from MDOT and the remainder from the Golf Course fund.

STAFF RECOMMENDATION: Approve.

**Motion by Commissioner Larson, second by Commissioner Spataro to award the Lakeshore Trail Phase IV Contract to Schultz Excavating.**

**ROLL VOTE: Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro**

**Nays: Warmington, Buie**

***MOTION PASSED***

**2003-52 NEW BUSINESS:**

a. <u>Approval of Resolution, Purchase Agreement and QuitClaim for the Sale of 850 Wood.</u> COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To authorize the Mayor and City Clerk to sign the resolution to sell the home, and approve the purchase agreement between David D. Sperry and the City of Muskegon for the purchase of the City owned home located at 850 Wood a.k.a. "Wood Street Revival" for the price of $55,000.

The structure at 850 Wood was totally rehabilitated by the Community and Neighborhood Services Department under its HOME rehabilitation program. The CNS office considers the rehabilitation of 850 Wood a.k.a. "Wood Street Revival" to be a major contribution to the blight fight efforts by the City of Muskegon in area 11.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the sale and the purchase agreement to sell 850 Wood a.k.a. "Wood Street Revival" to David D. Sperry and direct the Mayor and City Clerk to sign the quitclaim.

**Motion by Commissioner Spataro, second by Commissioner Schweifler to approve the purchase agreement, resolution and quitclaim for the sale of 850 Wood St. to David D. Sperry.**

**ROLL VOTE: Ayes: Larson, Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron**

**Nays: None**

***MOTION PASSED***

b. <u>Acceptance of Purchase Agreement from the Muskegon Housing Commission.</u> COMMUNITY & NEIGHBORHOOD SERVICES AND INSPECTIONS

SUMMARY OF REQUEST: To accept the purchase agreement from the Muskegon Housing Commission concerning seven Housing Commission homes (a.k.a. Turnkey 3). The specific addresses of the homes are 1668 Beidler, 284 Iona, 361 Oak, 383 Catherine, 747 Marcoux, 214 Washington and 404 Washington.

The total cost to purchase is seven dollars ($7.00). The City has agreed to acquire all the homes, except 1950 Terrace.

The City of Muskegon will demolish 1950 Terrace St., but the Housing Commission will retain ownership. The City will bill the Housing Commission for the cost of the demolition.

Four of the properties, 1668 Beidler, 361 Oak, 284 Iona and 404 Washington will be demolished. New homes will be constructed, starting with Beidler and Oak. The City HOME funds will cover the demolition and new construction cost.

The other sites will be demolished with CDBG fund and 1950 Terrace will be "torn" down with general funds.

FINANCIAL IMPACT: The seven dollars will be taken from the General Fund.

BUDGET ACTION REQUIRED: None at this time.

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

**Motion by Commissioner Shepherd, second by Commissioner Spataro to approve the agreement from the Muskegon Housing Commission for 1668 Beidler, 284 Iona, 361 Oak, 383 Catherine, 747 Marcoux, 214 Washington and 404 Washington for $7.00 (seven).**

**ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron, Larson**

**Nays: None**

***MOTION PASSED***

c. Approval of Contract with A-1 Professional Construction. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To accept the low bid submitted by A-1 Professional of Grand Rapids, MI for the lead base abatement at the city-owned property located at 503 Octavius for $27,475.

After the abatement is competed, the home will be totally rehabilitated and sold to a qualified family as a single-family owner-occupied structure. This project is under the Community and Neighborhood Services Housing Rehabilitation Program entitled "Operation Jackson Hill Urban Renewal Project #1 (Wgirtt)

FINANCIAL IMPACT: The cost of this project will be financed with 2001 HOME Funds.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the contract with A-1 for $27,475 to complete the lead base paint abatement at 503 Octavius.

**Motion by Commissioner Gawron, second by Commissioner Shepherd to approve the contract with A-1 Professional Construction for $27,475 to complete the lead base paint abatement at 503 Octavius.**

**ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Buie, Gawron, Larson, Schweifler**

Nays: None

*MOTION PASSED*

d. <u>Veteran's Park Maintenance Agreement.</u> CITY MANAGER

SUMMARY OF REQUEST: To approve the agreement with Muskegon County and the City of North Muskegon for the maintenance of Veteran's Park.

FINANCIAL IMPACT: Approximately $16,000.

BUDGET ACTION REQUIRED: A budget adjustment is necessary to accommodate this increase.

STAFF RECOMMENDATION: To approve the agreement.

**Motion by Commissioner Schweifler, second by Commissioner Spataro to approve the agreement with Muskegon County and the City of North Muskegon for the maintenance of Veteran's Park, including amendments suggested by the City Manager.**

**ROLL VOTE: Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd**

**Nays: None**

*MOTION PASSED*

e. <u>Vulnerability Assessment Proposal.</u> PUBLIC WORKS

SUMMARY OF REQUEST: To accept the proposal by Tetra Tech MPS to perform a Vulnerability Assessment of the City's water system as required by the Environmental Protection Agency.

FINANCIAL IMPACT: Proposal cost of $28,000.00

BUDGET ACTION REQUIRED: May required a budget amendment if funds cannot be found within other line items, as the proposal was not budgeted.

STAFF RECOMMENDATION: Recommend Mayor and Commission endorses the proposal from Tetra Tech MPS and enters into contract for performance of the Vulnerability Assessment at a cost of $28,000.00.

**Motion by Commissioner Gawron, second by Commissioner Schweifler to accept the proposal by Tetra Tech MPS for the cost of $28,000.00 to perform a Vulnerability Assessment of the City's Water System as required by the Environmental Protection Agency.**

**ROLL VOTE: Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro**

**Nays: None**

*MOTION PASSED*

f. <u>Rezoning Request for Properties Located Within 'Area 11'.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone most of the 1148 properties located within 'Area 11' (bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the request.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their 6/12 meeting, with three changes in the proposed zoning. They recommended that 410 E. Apple Ave. be rezoned to B-2 instead of RT, that 1192 Wood St. be rezoned to B-1 instead of RT, and that 1076 Ambrosia, 1080 Ambrosia, 320 Iona, 316 Iona and 310 Iona all be rezoned to R-1 instead of RT. The vote was unanimous with J. Aslakson, B. Mazade, B. Smith and T. Harryman absent.

**Motion by Commissioner Spataro, second by Vice Mayor Buie to approve the rezoning request for most of the 1148 properties located within 'Area 11' (bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.).**

**ROLL VOTE: Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington**

**Nays: None**

***MOTION PASSED***

g. Industrial Facilities Tax Payment Agreement - Burgess-Norton. CITY MANAGER

SUMMARY OF REQUEST: To approve the IFT payment agreement with Burgess-Norton to pay Industrial Facilities taxes as a result of the closing of their facility in the City.

FINANCIAL IMPACT: $217,390 to be distributed to the taxing jurisdictions.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the agreement.

**Motion by Commissioner Spataro, second by Commissioner Schweifler to approve the IFT payment agreement with Burgess-Norton to pay Industrial Facilities Taxes as a result of the closing of their facility in the City.**

**ROLL VOTE: Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington, Buie**

**Nays: None**

***MOTION PASSED***

h. Fireworks Display Permit - LL Cool J Concert at Summer Celebration City Clerk

SUMMARY OF REQUEST: To approve the Fireworks Display Permit for the LL Cool J Concert contingent upon approval of insurance certificate and inspection of fireworks by Fire Marshall Metcalf.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve.

**Motion by Commissioner Schweifler, second by Commissioner Shepherd to approve the Fireworks Display Permit for the LL Cool J Concert contingent upon approval of insurance certificate and inspection of fireworks by Fire Marshall Metcalf.**

**ROLL VOTE: Ayes: Larson, Schweifler, Shepherd, Spataro, Warmington, Buie,**

Gawron

Nays: None

*MOTION PASSED*

Motion by Commissioner Schweifler, second by Vice Mayor Buie to go into Closed Session at 6:33pm to discuss pending litigation.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Buie, Gawron, Larson

Nays: None

Excused: Warmington

*MOTION PASSED*

Motion by Commissioner Schweifler, second by Commissioner Larson to go into open session at 6:58pm.

ROLL VOTE: Ayes: Shepherd, Spataro, Buie, Gawron, Larson, Schweifler

Nays: None

Excused: Warmington

*MOTION PASSED*

**2003-53 CLOSED SESSION:** To discuss pending litigation.

Motion by Commissioner Schweifler, second by Commissioner Spataro to concur with the recommendation of the City Attorney on housing demolition case.

ROLL VOTE: Ayes: Spataro, Buie, Gawron, Larson, Schweifler, Shepherd

Nays: None

Excused: Warmington

*MOTION PASSED*

The Regular Commission Meeting for the City of Muskegon was adjourned at 7:00PM.

Respectfully submitted,

Gail Kundinger

Gail Kundinger, MMC

2003-50 b)

**Date:** June 17, 2003

**To:** Honorable Mayor and City Commissioners

**From:** Engineering

**RE:** City – MDOT Agreement for:
Lincoln, Sherman to Lakeshore Dr.

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## SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the milling & resurfacing as well as reconstruction of Lincoln street between Sherman & Lakeshore Dr. and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

## FINANCIAL IMPACT:

MDOT's participation is estimated at $353,000 but not to exceed 81.85% of eligible cost. The estimated total cost of the project, including the none participating items of engineering and watermain, is $490,000.

## 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 was budgeted.

## STAFF RECOMMENDATION:

That the attached agreement and resolution be approved.

## COMMITTEE RECOMMENDATION:

RESOLUTION 2003-50 (b)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE MILLING & RESURFACING / RECONSTRUCTION OF LINCOLN STREET FROM SHERMAN TO LAKESHORE DR. TOGETHER WITH THE NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

Moved by Vice Mayor Buie and supported by

Commissioner Schweifler that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **03-5204** between the Michigan Department of Transportation and the City of Muskegon for the resurfacing & widening of the southbound exit ramp at US-31 and Sherman Blvd. within the City is in the best interests of the City of Muskegon.

**RESOLVED**, that entry by the City into Contract Agreement Number **03-5204** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24th day of June, 2003.

BY [signature]
Stephen J. Warmington, Mayor

ATTEST Gail A. Kundinger
Gail A. Kundinger, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on June 24, **2003**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kundinger
Gail A. Kundinger, Clerk

STP

| | |
|---|---|
| DIR | |
| Project | STP 0361(020) |
| Job Number | 56361 |
| Control Section | STUL 61407 |
| Fed Item # | HH 3544 |
| Contract No. | 03-5204 |

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of JUL 1 0 2003, 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 April 28, 2003, attached hereto and made a part hereof:

PART A - FEDERAL PARTICIPATION
Hot mix asphalt paving and concrete pavement replacement work along Lincoln Street from Sherman Boulevard to Lakeshore Drive; including grading and drainage structure adjustment work; and all together with necessary related work.

PART B - NO FEDERAL PARTICIPATION
Watermain work along Lincoln Street from Sherman Boulevard to Lakeshore Drive; and all together with necessary related work.

WITNESSETH:

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

RECEIVED
CITY OF MUSKEGON
JUL 0 1 2003
ENGINEERING DEPT.

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.

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 and 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 and inspection services necessary for the completion of the PROJECT.

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 81.85 percent up to an amount not to exceed $366,000. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required 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 30 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 Federal Funds earned as the PROJECT progresses.

In the event of any discrepancies between PART I and PART II, 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 a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, 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.

11. 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.

12. 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 or 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 or 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 or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or 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 or 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 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 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 copies of notices and reports prepared to those insured.

18. 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 resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

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

CITY OF MUSKEGON

By ______________________
Title: Mayor Stephen Warmington

By Gail Kundinger
Title: City Clerk Gail Kundinger

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By ______________________
Department Director MDOT

FORM APPROVED
5/15/03
ASSISTANT
ATTORNEY
GENERAL

REVIEWED
4-30-03
CONTRACT ADMIN

April 28, 2003

EXHIBIT I

| | |
|---|---|
| PROJECT | STP 0361(020) |
| JOB NUMBER | 56361 |
| CONTROL SECTION | STUL 61407 |

ESTIMATED COST

CONTRACTED WORK

| | PART A | PART B | TOTAL |
|---|---|---|---|
| Estimated Cost | $431,300 | $27,800 | $459,100 |

COST PARTICIPATION

| | | | |
|---|---|---|---|
| GRAND TOTAL ESTIMATED COST | $431,300 | $27,800 | $459,100 |
| Less Federal Funds* | $353,000 | $ 0 | $353,000 |
| BALANCE (REQUESTING PARTY'S SHARE) | $ 78,300 | $27,800 | $106,100 |

*Federal Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 81.85 percent up to an amount not to exceed $366,000.

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 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 $300,000 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.**

2003-50 c)

**Date:** June 24, 2003

**To:** Honorable Mayor and City Commissioners

**From:** Gail A. Kundinger, City Clerk

**RE:** Fireworks Display – Commodores Concert

---

SUMMARY OF REQUEST: Management Associates, Inc., is requesting approval of a fireworks display permit for June 28, 2003, during the Commodores performance at the Muskegon Summer Celebration. Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks. The insurance coverage has been approved.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/13/2003

PRODUCER (651)644-0311 FAX (651)641-8981
Paulet/Slater, Inc.
2610 University Ave., #200
St. Paul, MN 55114

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 Commodores New
1920 Benson Avenue
St Paul, MN 55116-3290

| INSURERS AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Firemans Fund-The American Insurance Co | |
| INSURER B: | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |

## COVERAGES

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

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|---|---|---|---|---|---|---|---|
| A | | GENERAL LIABILITY<br>[X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC | XPK20786765 | 08/01/2002 | 08/01/2003 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurence) | $ 100,000 |
| | | | | | | MED EXP (Any one person) | $ 5,000 |
| | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | | | | | | GENERAL AGGREGATE | $ 1,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | $ 1,000,000 |
| | | AUTOMOBILE LIABILITY<br>[ ] ANY AUTO<br>[ ] ALL OWNED AUTOS<br>[ ] SCHEDULED AUTOS<br>[ ] HIRED AUTOS<br>[ ] NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | GARAGE LIABILITY<br>[ ] ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | $ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | $ |
| | | | | | | AGG | $ |
| | | EXCESS/UMBRELLA LIABILITY<br>[ ] OCCUR [ ] CLAIMS MADE<br>[ ] DEDUCTIBLE<br>[ ] RETENTION $ | | | | EACH OCCURRENCE | $ |
| | | | | | | AGGREGATE | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below | | | | WC STATU-TORY LIMITS / OTH-ER | |
| | | | | | | E.L. EACH ACCIDENT | $ |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | E.L. DISEASE - POLICY LIMIT | $ |
| | | OTHER | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
It is understood and agreed The City of Muskegon and all elected and appointed, all volunteers, all Board of Commissioners as authorized and their board, employees and volunteers, the County of Muskegon, the Muskegon Summer Celebration, their employees and volunteers and MMCS, Inc. dba Meridian Entertainment Group, its officers and employees are named as additional insureds as respect the Commodores concert on June 28, 2003

| CERTIFICATE HOLDER | CANCELLATION |
|---|---|
| City of Muskegon<br>933 Terrace<br>Muskegon, MI 49440 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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.<br>AUTHORIZED REPRESENTATIVE<br>Pamela J. Kleidon |

ACORD 25 (2001/08) ©ACORD CORPORATION 1988

2003-50 (c)

# 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: (x) PUBLIC DISPLAY ( ) AGRICULTURAL PEST CONTROL

ISSUED TO:

NAME Derrick Roy

ADDRESS AGE

1920 Benson Ave., St. Paul, MN. 38yrs.

REPRESENTING MANAGEMENT ASSOCIATES INC.

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

MANAGEMENT ASSOCIATES INC.

ADDRESS

1920 Benson Ave., St. Paul, MN

NUMBER & TYPES OF FIREWORKS: See Attached

DISPLAY:

EXACT LOCATION

Heritage Park Landing

CITY, VILLAGE, TOWNSHIP DATE TIME

June 28, 2003 9PM - 11PM

BOND OR INSURANCE FILED: (x) YES ( ) NO AMOUNT 1,000,000.00

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 24th day of June, XX 2003

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

FM-32(12-68)

# APPLICATION
## FOR FIREWORKS DISPLAY PERMIT
Act 358, P.A. 1968

DATE OF APPLICATION: 6-13-03

1. TYPE OF DISPLAY: [X] Public Display [ ] Agricultural Pest Control

**2. APPLICANT**

| NAME OF PERSON | ADDRESS | AGE: Must be 21 or over |
|---|---|---|
| Management Associates, Inc | 1920 Benson Ave., St. Paul, MN 55116-3290 | |
| IF A CORPORATION: Name of President | ADDRESS | |
| David L. Fish | 651-699-1155 | |

**3. PYROTECHNIC OPERATOR**

| NAME | ADDRESS | AGE: Must be 21 or over |
|---|---|---|
| Derrick Roy | 1920 Benson Ave, St Paul, MN 55116-3290 | 38 |

EXPERIENCE:

| NUMBER OF YEARS | NUMBER OF DISPLAYS | WHERE |
|---|---|---|
| 12 | 1200 | Internationally |

NAMES OF ASSISTANTS:

| NAME | ADDRESS | AGE |
|---|---|---|
| — | — | — |
| — | — | — |

**4. NON-RESIDENT APPLICANT**

| NAME | ADDRESS | |
|---|---|---|
| Meridian Entertainment Group | 608 S. Union St. Traverse City, MI 49684 | TELEPHONE NUMBER |
| Name of Michigan Attorney or Resident Agent: Kevin Meyer | ADDRESS: 333 N. Cedar St. Lansing, MI 48912 | 517-267-1502 |

**5. EXACT LOCATION OF PROPOSED DISPLAY**

Heritage Park Landing, Muskegon, MI 49440

DATE: Saturday, June 28, 2003 TIME: 9pm - 11pm.

**6. NUMBER AND KINDS OF FIREWORKS TO BE DISPLAYED**

See Attached

MANNER & PLACE OF STORAGE PRIOR TO DISPLAY

(Subject to Approval of Local Fire Authorities)

**7. FINANCIAL RESPONSIBILITY**

A. AMOUNT OF BOND OR INSURANCE (to be set by municipality) $ 1,000,000

B. BONDING CORPORATION OF INSURANCE COMPANY: NAME: Firemans Fund - The American Insurance Co.

ADDRESS: c/o Paulet/Slater, Inc. 2610 University Ave #200, St. Paul, MN 55114

(See other side for instructions)

25.4.3. Cables shall be provided by **PURCHASER** to reach within one hundred (100') feet of upstage right or left. Neutral and ground cables MUST be the same size as the hot cables. Cables shall be sized such that voltage drop across cable is less than three (3) volts at above listed loads.

25.4.4. An operator/repairman to operate generator shall be supplied by **PURCHASER** from rigging call until disconnect at conclusion of show. Fuel for sixteen (16) hours shall be supplied with generator.

## 26. PYROTECHNICS

**ARTIST** utilizes pyro throughout their live performance. This is an integral part of the show and every attempt should be made to facilitate its use.

26.1. Civic regulations vary greatly from country to country, state to state, and city to city. In the United States, city or county authorities may require a permit. Pyrotechnic permits vary in cost from no charge to a nominal fee. The local fire department is usually the organization that will issue the permit. It is the responsibility of the **PURCHASER** to arrange and pay for the permit.

26.2. In most municipalities the Fire Marshal will require a "Test" firing, i.e. samples of the effects to be used during the performance are detonated for the local authority to verify their usage with respect to the particular venue. There may be a charge for the Fire Department's representative to attend this "Test" firing. If required, **PURCHASER** is to arrange and pay for the site inspection. This "Test" firing should normally be scheduled for 3:00PM on the day of performance. Please confirm this time with **PRODUCER's** Production Manager.

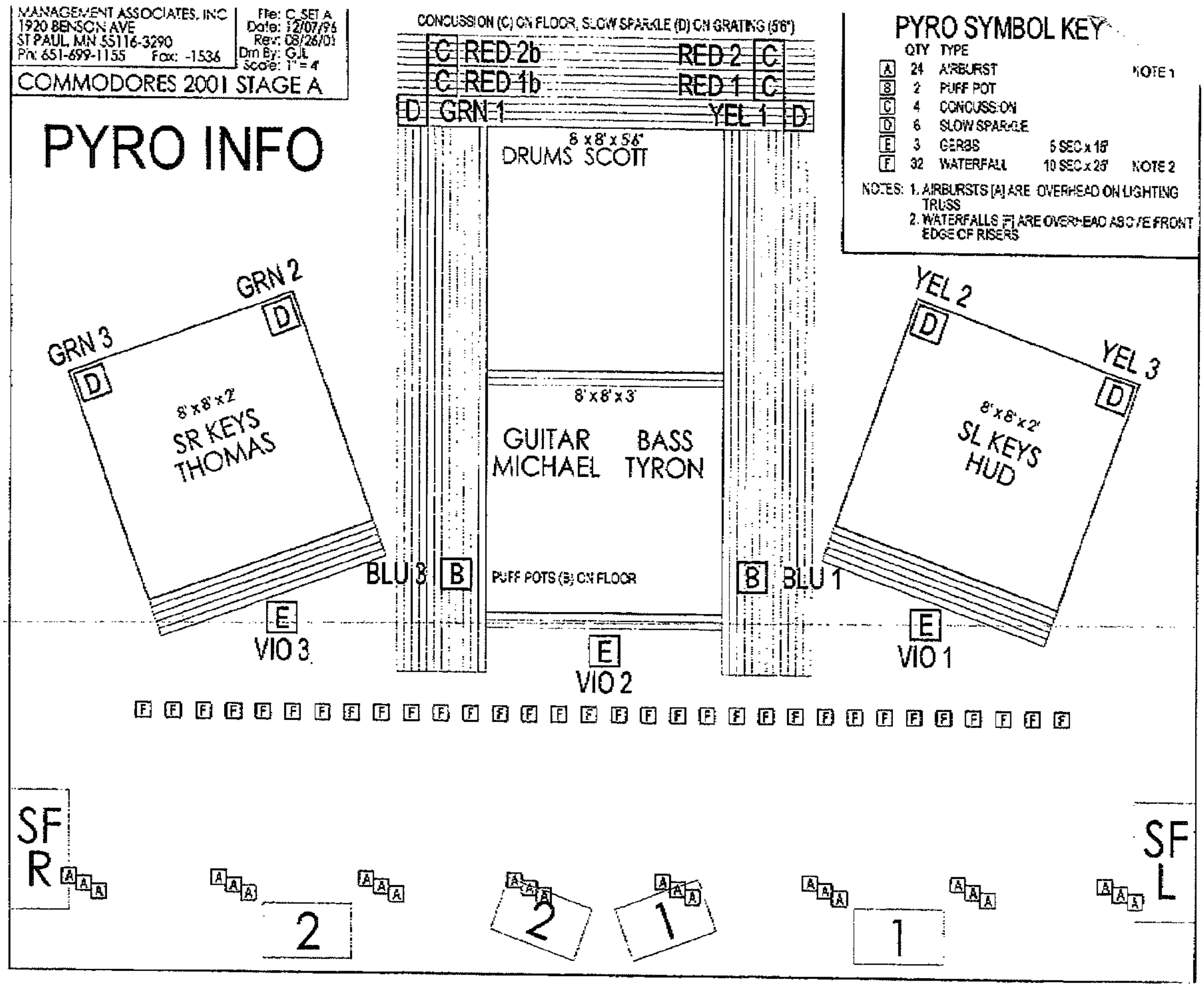
26.3. **PRODUCER** provides its Pyrotechnician at no charge to the **PURCHASER**, however if the local authority requires a locally licensed, certified, and bonded Pyrotechnician "Shooter" to be on hand during the preparation of the effects, the "Test" firing, and the performance, **PURCHASER** must arrange and pay for the local "Shooter".

26.4. **PRODUCER's** pyrotechnic equipment and supplies are manufactured by:

Luna-Tech, Inc. — Ph: 256-725-4224
148 Moon Drive — Fax: 256-725-4811
Owens Crossroads, AL 35763

26.5. Listed below are the types of pyrotechnic effects used in **ARIST's** performance:

| EFFECT | NAME | LOAD | AURAL | VISUAL | FALLOUT |
|---|---|---|---|---|---|
| A | Airburst | 1/10 Oz | Soft "Pop" | 5' to 10' bright fall of silver sparkles, 2 seconds | Minimal 4' radius |
| B | Puff Pot | 1/2 Oz | Soft "Poof" | Bright 1 second red flash followed by a puff of smoke | None |
| C | Concussion Mortar | 1/2 Oz | Loud "Cannon" | Bright white flash, 6' high x 6' wide, 1/4 seconds | None |
| D | Slow Sparkle Pots | 3/8 Oz | Soft "Whoosh" | Fountain of white sparkles, 15' high, 2 seconds | None |
| E | Fountain Gerbs | Pre-Loaded | Soft "Hiss" | "Bush" shaped sparkle, 15' high x 8' wide, 10 seconds | 10' to 15' clearance |
| F | Waterfall | Pre-Loaded 32 charges on 12" ctrs | Soft "Whoosh" | "Bush" shaped sparkle, 20' drop x 3' wide, 10 seconds | 3' to 5' clearance |


MANAGEMENT ASSOCIATES, INC
1920 BENSON AVE
ST PAUL, MN 55116-3290
Ph: 651-699-1155 Fax: -1536
File: C_SET A
Date: 12/07/96
Rev: 08/26/01
Drn By: GJL
Scale: 1" = 4'
COMMODORES 2001 STAGE A
PYRO INFO
CONCUSSION (C) ON FLOOR, SLOW SPARKLE (D) ON GRATING (5'6")
C RED 2b
RED 2 C
C RED 1b
RED 1 C
D GRN 1
YEL 1 D
8' x 8' x 5'6"
DRUMS SCOTT
8' x 8' x 3'
GUITAR MICHAEL
BASS TYRON
GRN 2
D
GRN 3
D
8' x 8' x 2'
SR KEYS THOMAS
YEL 2
D
YEL 3
D
8' x 8' x 2'
SL KEYS HUD
BLU 3 B
PUFF POTS (B) ON FLOOR
B BLU 1
E
VIO 3
E
VIO 2
E
VIO 1
F F F F F F F F F F F F F F F F F F F F F F F F F F F F F F F F
SF R
A A A
A A A
A A A
A A A
A A A
A A A
A A A
A A A
2
2
1
1
SF L
PYRO SYMBOL KEY
QTY TYPE
A 24 AIRBURST NOTE 1
B 2 PUFF POT
C 4 CONCUSSION
D 6 SLOW SPARKLE
E 3 GERBS 5 SEC x 15'
F 32 WATERFALL 10 SEC x 25' NOTE 2
NOTES: 1. AIRBURSTS [A] ARE OVERHEAD ON LIGHTING TRUSS
2. WATERFALLS [F] ARE OVERHEAD ABOVE FRONT EDGE OF RISERS

**Date:** June 24, 2003

**To:** Honorable Mayor and City Commissioners

**From:** City Clerk, Gail Kundinger

**RE:** Change of Polling Place

---

SUMMARY OF REQUEST: The Muskegon Public Schools will be closing Froebel School, which we are currently using for Precinct #4 polling place. We request permission to change the polling place to the Smith Ryerson Bldg., which is just down the hill from Froebel School.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

MUSKEGON
Public Schools

Support Services • 349 W. Webster Ave., Muskegon MI 49440 • 231-720-2020 • FAX 720-2076 • TTY 720-2066

April 28, 2003

City Clerk
City of Muskegon
933 Terrace
Muskegon, MI 49440

Dear Clerk's Office:

As you are aware, Froebel School has served as a polling location for many years.

Effective July 1, 2003, Froebel School will be closed and will no longer be available as a polling location.

Should you have any questions, please feel free to call.

Sincerely,

Gary Privasky
Director of Support Services

cityclrk04-28-03

2003-50 JD

**Commission Meeting Date: June 24, 2003**

| | |
|---|---|
| **Date:** | **June 18, 2003** |
| **To:** | **Honorable Mayor and City Commissioners** |
| **From:** | **Planning & Economic Development** CBC |
| **RE:** | **Zoning Ordinance Amendment for Banners** |

---

SUMMARY OF REQUEST:

Request to amend Section 2334 (Signs) of Article XXIII (General Provisions) of the City's Zoning Ordinance in order to permit banners under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 6/12 meeting, with B. Mazade, J. Aslakson, B. Smith, and T. Harryman absent. The vote was unanimous.

2003-50 (f)

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2108

**An ordinance to amend Section 2334 (Signs), of Article XXIII (General Provisions) of the City's Zoning Ordinance to permit banners under certain conditions.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2334 (Signs), of Article XXIII (General Provisions) of the Zoning Ordinance of the City of Muskegon is hereby amended to move banners from #4 (Prohibited Signs) to #5 (Exempt Signs) and to add conditions under which they are allowed.

4. **Prohibited Signs (all districts):** The following listed signs are prohibited in any zoning district of the City:

   a. A sign displaying intermittent lights and lights resembling the flashing lights customarily used in traffic signals, or police, fire, ambulance, or rescue vehicle or signs which imitate official traffic directional signs or devices.

   b. A sign using the words, "Stop", "Danger", or any other words, phrases, symbols, or characters, in such a manner as to interfere with, mislead, or confuse a vehicle driver.

   c. Signs affixed to trees, shrubs or similar natural features.

   d. Signs affixed to fences or utility poles or structural elements not capable to support such signs.

   e. Any sign which obstructs the ingress or egress from a required door, window, or other required exit.

   f. Signs on parked vehicles where the sign is the primary use of the vehicle.

   g. Banners used as permanent signs.

   h. Temporary signs and devises including inflatable devices, pinwheels, searchlights or other devices with similar characteristics, except when used temporarily for periods not to exceed fifteen (15) days to announce the opening of a new type of business or use by a new owner.

   i. Portable "A" frame signs, inverted "T" signs with spider legs, with or without wheels where lettering can be changed, rearranged or altered (see also definition of "portable" sign). Except that "A' frame signs are permitted in the Clay-Western and National Register Historic Districts with Historic District Commission approval.

j. Signs which overhang or extend into a dedicated public right-of-way without the written consent of the city. Any signs which encroach upon the public right-of way do not qualify as legal nonconforming signs. Such signs shall be considered an illegal use and shall be removed.

k. Signs that have concrete foundations or other solid anchoring devices that project above the surface of the ground more than eighteen inches (18").

l. Signs which are painted, placed or constructed directly on or project from a roof.

m. Off-premise signs except billboards regulated herein or tourist oriented directional signs placed in cooperation with the City.

n. Signs with visible moving, revolving, rotating parts, or visible mechanical movement of any description or other apparent visible movement achieved by electrical, electronic, or mechanical means.

o. Externally illuminated signs which can bleed light, interfere with the city's "night sky" objectives, cast glare in the public right-of-way distracting drivers, and shining into adjacent residential areas interfering with resident's enjoyment of their personal property.

5. <u>**Exempt Signs**</u>: The following signs, provided such signs are established in a lawful manner and placed so as not to cause a nuisance or create a safety hazard, are permitted without a permit:

a. One real estate sale and "For Rent" or "Lease" or construction sign per property not exceeding eight (8) square feet in display area when located within a residential district. For all other districts, one real estate sale and "For Rent" or "Lease" sign per major bordering street complying with the standards of Table II.

b. On-site political campaign signs not exceeding thirty-two (32) square feet in display area. It is recommended that they are not erected any sooner than thirty (30) days prior to the scheduled day of election for which they are made and removed within 10 days of the election.

c. "No Hunting", "No Trespassing", and on-premise "Garage Sale" signs not exceeding four (4) square feet in display area.

d. On-premise directional signs approved as part of the site plan process not exceeding two signs per road frontage and not exceeding six (6) square feet in display area or four (4) feet in height. Not more than twenty-five (25%) of the area of any directional sign may be devoted to business identification or logo.

e. Signs identifying a building's address and/or the names of the occupants but not exceeding four (4) square feet in display area.

f. Historic markers, signs identifying the names of a building or date of erection of a structure.

g. Official notices of any court or public agency not exceeding twelve (12) square feet in display area.

h. Window signs covering up to twenty five percent (25%) of the structure's total window area.

i. Traffic control, directional, warning, or informational signs when authorized by a public agency having appropriate jurisdiction.

j. Signs required by federal or state agencies in connection with federal or state grant projects and programs.

k. The flags of government or noncommercial institutions.

l. Banners for special events or sales, provided:

   i) Banners must be made of plastic, vinyl or another similar material of professional quality.

   ii) Banners must be neatly hung, taunt and secure.

   iii) Banners may not pose a hazard to public safety.

   iv) A business or institution with up to 140 feet of frontage is limited to one (1) banner of no more than 24 square feet.

   v) A business or institution with between 141 and 280 feet of frontage is limited to two (2) banners totaling no more than 48 square feet.

   vi) A business or institution with 281 feet of frontage or more is limited to three (3) banners totaling no more than 72 square feet.

This ordinance adopted:

Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmingto

Nayes: None

Adoption Date: June 24, 2003

Effective Date: July 10, 2003

First Reading: June 24,2003

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, MMC, City Clerk

Commission Meeting Date: June 24, 2003 - Zoning Ordinance Amendment for Banners

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 24th day of June, 2003, 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 24, 2003.

Gail A. Kundinger

Gail A. Kundinger, MMC
Clerk, City of Muskegon

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

May 8, 2002

To: Planning Commission members
Fr: Brenda Moore
Re: Temporary sign regulations

**Background**

Earlier this year the City Commission asked staff to look into relaxing the temporary sign regulations as they relate to banners because several businesses had expressed concern that our regulations were too stringent.

Before drafting new language for temporary signs, we sent letters to area businesses asking for their thoughts regarding temporary signs. We used the Yellow Pages and our computerized map with assessor's data to find:

| | |
|---|---|
| | 38 Sign companies |
| | 27 business contacts on Apple |
| | 56 business contacts on Laketon |
| | 40 business contacts on Getty |
| | 23 business contacts on Henry |
| | 29 business contacts on Lakeshore |
| | 33 business contacts on Sherman |
| Total | 246 |

We gave our contacts 30 days to reply and comments trickled in for about 45 days. As a result of our solicitation, we received several calls and letters. The letters came from Port City Signs, Muskegon Awning, RC Productions, and Betten Chevrolet (attached). Following is a summary of the phone comments:

Pizza Hut: "Depends heavily on banners to promote new products."

Doom Investments: "Banners are too strict now, but does not want to see them proliferate."

Auto Zone: "Stores like to use banners for advertising products like wiper blades, for example, they have a banner that says "Have you changed your wiper blades lately"

Tuffy: "In favor of allowing restrictions to stay neat but like to use banners."

Roy Grewal: "14 days is too short, more time is needed for grand openings and special occasions."

Bill Wipperforth of 1734 Getty "Banner regulations are a little too restrictive. Should be available on a short term basis for people who have special sales."

Staff also talked to RC Productions, Muskegon Awning, and Port City Signs as a follow-up to their letters to better understand where they were coming from.

## Recommendation

Permit banners and require a certain level of quality regarding materials, use and placement.

**CITY OF MUSKEGON**
**NOTICE OF ADOPTION**

Please take notice that on June 24, 2003, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2334 (Signs), of Article XXIII (General Provisions) of the City's Zoning Ordinance, to move banners from #4 (Prohibited Signs) to #5 (Exempt Signs) under certain conditions.

Banners will now be permitted in the city, with no permit required, as long as they meet the following conditions:

a. Banners must be made of plastic, vinyl or another similar material of professional quality.
b. Banners must be neatly hung, taunt and secure.
c. Banners may not pose a hazard to public safety.
d. A business or institution with up to 140 feet of frontage is limited to one (1) banner of no more than 24 square feet.
e. A business or institution with between 141 and 280 feet of frontage is limited to two (2) banners totaling no more than 48 square feet.
f. A business or institution with 281 feet of frontage or more is limited to three (3) banners totaling no more than 72 square feet.

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 June 30, , 2003

CITY OF MUSKEGON

By ______________________________
Gail A. Kundinger, MMC
City Clerk

---

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

Account No. 101-80400-5354

2003-50 g)

**Date:** **June 24, 2003**

**To:** **Honorable Mayor and City Commissioners**

**From:** **Community Relations Committee**

**RE:** **Crisis Communications Plan**

---

SUMMARY OF REQUEST: The Public Relations Committee and City Staff have reviewed the Crisis Plan and it is now ready to be adopted.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval

# CITY OF MUSKEGON

## Crisis Communications Plan

June 24, 2003

MUSKEGON

West Michigan's Shoreline City

## TABLE OF CONTENTS

## OVERVIEW

For governments, crises occur in all different shapes and sizes, and at all times of the day and night. Because government serves and affects so many different constituencies, a government crisis often affects many people, businesses and organizations. In fact, a government crisis can affect every person, business and organization in our community.

Any crisis or disaster becomes a matter of public record as soon as local emergency personnel arrive. Such events are newsworthy. We must work the media. Control them or they control you.

What we say, when we say it and how we say it will help determine how well we manage the crisis information for our most important constituencies - our citizens and the media who report our actions to the community.

More information for our public sooner is better than little or no information later. In a crisis this simple strategy is our goal.

In short, we will be:

- Prepared and Proactive
- Responsive
- Honest

Whenever possible during a crisis, media interviews should be handled by a single spokesperson. All news releases and written statements released to the news media should be reviewed by the Mayor, City Manager or designee, and (when appropriate) legal personnel prior to release.

Never comment to the news media "off the record." And never say "No Comment".

# CRISIS PLAN PURPOSE

This plan provides guideline for the release of information to the news media.

A clear understanding of media issues must be developed. Who releases what? The timeliness and accuracy of the information is very important. Plans should be made early on in the incident to include the media. Questions need to be addressed regarding entrance to an incident area and what information is given to the media. It is important that those on the scene providing assistance know what information the media is broadcasting to the public.

This plan is designed to aid management decision making, promote effective use of resources and support compliance with regulatory agencies, facility and company requirements and policies. This plan in no way is intended to provide an answer for every problem or situation the City of Muskegon and its community may encounter, but to set a stage where they can be managed in a calm and professional manner.

If an incident/crisis/emergency is site specific those owners/operators must be an integral part of any P.I.O. team. All statements must be issued jointly to preclude different "messages".

**It is designed to complement – but not replace – existing emergency response plans as well as policies and procedures that may deal with specific crisis situations in more detail.**

# CRISIS COMMUNICATIONS PLAN
## Shall Include

- Media Policy Guidelines that state who is in charge of handling the media. Who is our community's first response spokesperson. It should specify who is in charge of handling media, gathering the facts, taking questions, presenting answers on the record, providing background information, informing city officials, city departments and employees.

- A fact sheet or two about our community (year founded, population, square miles, annual budget, important attractions, number of schools/students, top employers, etc.) Assemble these in Media Kits.

- List of key individuals (mayor, commission, city manager, department heads). (Not for public distribution)

- Contact Lists: Internal ( attorneys, police, fire), and External (media, )

- Mobilization Strategy. If a crisis occurs, where does the response team initially meet, does the room/building have phones, fax machine, Internet access, bathrooms, a place to meet with the media, radios to communicate with police and fire, other city responders. Who from the city responds/mobilizes ? Who is responsible for getting people there ?

  JPIC – Depends on site of event, size of event and duration of event.

## KNOW THE KEY PUBLICS

### If a crisis occurs in the city, who is affected ?

### If you say something publicly / in the media about the crisis, who will hear it and how will it affect them ?

- Commissioners
- The Media
- Citizens, the general public, voters, neighborhoods associations.
- City Employees
- Businesses, business leaders
- State, county and federal elected officials
- School community (teachers, principals, superintendents)
- Developers who have ongoing projects in the city.

# CRISIS MEDIA RELATIONS CHECKLIST

1. Identify the spokesperson. One person takes the lead, but other city officials may need to be there also.

   The person should be credible, responsible, articulate, knowledgeable, calm and reassuring.

2. Get the Facts ! Find out exactly what happened. Determine what you can and can't release to the media. Know what the media want to know / anticipate questions.

   What happened ? When did it happen ? Where did it happen ? Who did it happen to ? How did it happen ? Who did it / who is responsible ? What are we going to do now ? What is the current status ? When is the next update ?

3. Identify the public who are affected and with whom you need to communicate.

4. Prepare your key messages.

5. Prepare a media room and identify where you will be meeting with the media. - JPIC

   Desks, tables, chairs, phone lines, laptops, background materials, schedule and updates, food, beverages, etc.

6. Prepare and distribute the media kits, a statement and other background as appropriate. Be prepared to provide regular updates. Every 30 minutes – 1 hour initially.

7. Provide access to our spokesperson(s). – scheduled briefings

8. Prepare an interview area.

   Limit access, limit noise, Interview set up with podium, microphone, etc.

   JPIC.

## PLAN OF ACTION:

The City of Muskegon recognizes the public's right to have access to public records and relevant information, and the news media's right to report matters of public interest. Michigan's Freedom of Information Act (F.O.I.A.) governs access to and release of public records and information. We will follow FOIA guidelines. In accordance with this law, the policy of City of Muskegon to release all information in a manner, which does not jeopardize the city or any others, involved. This shall be done through the designated FOIA representative (Lee Slaughter)

The city will provide information on matters of public concern to the public through the news media.. By doing so a mutually beneficial relationship of trust, cooperation and respect can be maintained.

Information will be released to the media without partiality.

# <u>WHAT CONSTITUTES A CRISIS?</u>

A crisis is any incident that can potentially create significant controversy or negative public opinion and can adversely affect our organization's ability to function in its normal fashion.

An incident <u>does not</u> have to involve deaths, injuries or property damage to be a crisis. In the event of a "disaster" ( varying degrees) – in which casualties from either external or internal sources cannot be dealt with under normal operating circumstances – The Emergency Management Team will always be activated.

Potential crises include:

(1) Disaster such as a tornado, fire, explosion, airplane crash, train derailment, automobile/bus accident, terrorist attack, etc.

(2) Fire, explosion, chemical (or radiation) release, building collapse. Situation leading to evacuation of part or all of the building. Power system or computer system failure.

(3) Allegation of sexual harassment, racial discrimination, etc. Drug abuse by employees.

(4) Hostage, shooting, poisoning, murder, (infant) kidnapping, robbery, rape, etc., on city property, or by a city employee.

(5) Investigation by regulatory or law enforcement agency.

(6) Protests, demonstrations against the City

# COMMUNICATIONS CHAIN OF COMMAND

- First person notified shall be the City Manager.
- The City Manager or his/her designee will contact the Mayor and City Commission.
- Dependent upon the Event, the City Manager or his/her designee will contact the appropriate Department Head or Supervisor.
- Dependent upon the Crisis the City Manager or his/her designee will communicate with City Employees
- Public Information Officer or his/her designee will contact the media.
- A spokesperson will be identified in each situation with a contact number. All calls will be forwarded to the designated spokesperson.
- City Manager or his/her designee will have a prepared statement for the media and will call a press conference if necessary.

## RESPONSIBILITY:

A. City Manager, Mayor, Commission and Public Relations staff shall receive a copy of any news releases.

B. Media inquiries received by any city personnel shall be referred to the proper person(s). (Mayor, City Manager or their designee)

C. Media request for information addressing policy and procedure shall be referred to the proper city official. (Mayor, City Manager or their designee)

D. Key employees shall be notified of who the spokesperson is and how to reach the spokesperson.

All necessary contacts should be completed within a matter of minutes.

# CONTACT LOG

A log should be established to record all telephone calls from the media or other parties inquiring about the crisis. This will help to ensure that the many callbacks required are not overlooked. It will also assist in the post-crisis analysis.

The contact log should contain the following information:

Date / Name of caller / Question(s) asked / Telephone number
Person responsible for response / Additional follow-up needs

**Media Hotline may be designated with a hot line number where public can leave a message and/or call to get information.**

# NEWS MEDIA CONTACT LIST

**The Muskegon Chronicle**

| | | | |
|---|---|---|---|
| John Stephenson | 725-6360 | metro editor | |
| | 722-2552 | fax | |

**WZZM 13 ABC**

| | | | |
|---|---|---|---|
| Mike Jacobson | 726-3064 | Muskegon | |
| John Mills | 726-3064 | Muskegon | |
| | 728-0507 | Fax | |

**WOOD TV8 NBC**

| | | | |
|---|---|---|---|
| Heather Herron | 771-9624 | Grand Rapids | |
| Doug DeYoung | 456-8888 | | |
| | 456-5755 | fax | (616) 393-6710 |
| | 456-9169 | fax | |

**FOX 17 News**

| | | | |
|---|---|---|---|
| Amy Turner | 447-5112 | Grand Rapids | |
| | 364-6018 | fax | |

**The Shoreline Business Monthly**

| | | | |
|---|---|---|---|
| Tim Gwozdz | 798-4669 | | |
| | 798-8335 | fax | |

**Radio:**

| | | | |
|---|---|---|---|
| Clear Channel | 727-5007 | | |
| | 725-0027 | fax | |

**TV40**

| | | | |
|---|---|---|---|
| WMKG | 733-4040 | | |
| | 739-4329 | fax | |

## POST CRISIS MEETING

After the crisis is declared over, a post crisis meeting should be held. All the internal players should convene to review actions taken and possible improvements in future circumstances.

# INTERVIEW TIPS

- During a media interview, repeat your message as frequently as you can, in response to as many questions as possible. (Don't answer the question, answer your message)

- Your message should be as short and simple as possible. You want your public to understand what you are saying……

## What you need to know when the media calls

- **Who ?**

- **What ?**

- **When ?**

- **Where ?**

- **Why ?**

- **How ?**

# The 9 C's of Communication

No matter who you want to reach, make sure you review this checklist before you start your communication strategy.

1. **Credibility**

   Does the message sender have credibility – is he or she a trusted and respected source of information – with the audience ?

2. **Context**

   Is the message in context with reality and the environment in which the audience is located ?

3. **Content**

   Is the message relevant to the audience ?

4. **Clarity**

   Is the message simple and straightforward ?

5. **Continuity and Consistency**

   Repeat your message for audience penetration.

6. **Channels**

   What channels or tools of communications are being used ? Media briefings, letters, flyers to neighborhoods, door to door, advertisements, public service announcements. What value does each have ?

7. **Constituent / Customer Benefits**

   Public wants to know how our actions are going to solve the crisis for them. (What's in it for me?)

8. **Capability of Audience**

   Is your audience capable of understanding your message ? Will they take the time to listen / read / watch ?

9. **Call to Action**

   What is your audience supposed to do now ???

# Key Messages Worksheet

**Key Message # 1**
The single most important statement I would like people to remember is :

**Talking Points**
Here is why this is so important:

**Key Message # 2**
The second most important statement I would like people to remember is:

**Talking Points**
Here is why this is so important :

**Key Message # 3**

**Talking Points**
Here is why this is so important :

2003-51 e)

**Date:** June 13, 2003

**To:** Honorable Mayor and City Commissioners

**From:** Ric Scott

**RE:** Lakeshore Trail IV Bids

---

SUMMARY OF REQUEST:

To award the contract to the low bidder, Schultz Excavating, to construct phase IV of the Lakeshore Trail

FINANCIAL IMPACT:

$314,267

BUDGET ACTION REQUIRED:

None, $375,000 was budgeted with 80% coming from MDOT and the remainder from the Golf Course fund

STAFF RECOMMENDATION:

Approve

COMMITTEE RECOMMENDATION:

Affirmative Action
231/724-6703
FAX/722-1214

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

Civil Service
231/724-6716
FAX/724-4405

Clerk
231/724-6705
FAX/724-4178

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

Engineering
231/724-6707
FAX/727-6904

Finance
231/724-6713
FAX/724-6768

Fire Dept.
231/724-6792
FAX/724-6985

Income Tax
231/724-6770
FAX/724-6768

Info. Systems
231/724-6744
FAX/722-4301

Leisure Service
231/724-6704
FAX/724-1196

Manager's Office
231/724-6724
FAX/722-1214

Mayor's Office
231/724-6701
FAX/722-1214

Inspection Services
231/724-6715
FAX/726-2501

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

Police Dept.
231/724-6750
FAX/722-5140

Public Works
231/724-4100
FAX/722-4188

Treasurer
231/724-6720
FAX/724-6768

Water Billing Dept.
231/724-6718
FAX/724-6768

Water Filtration
231/724-4106
FAX/755-5290

MUSKEGON

West Michigan's Shoreline City

Date: June 13, 2003

To: Honorable Mayor and City Commissioners

From: Ric Scott

Re: Lakeshore Trail Phase IV Bids

On Tuesday, June 10, 2003, six bids were received for the construction of Phase IV of the Lakeshore Trail, which runs from Fisherman's Landing to the Walker Arena. The bid results are attached.

Staff and the Engineers recommend awarding the contract to the low bidder, Schultz Excavating from Ludington. While they failed to provide notice with the bid that they received the second addendum to the bids, they have since made that notice to the city and have stated that their bid is good.

Consequently, staff would ask that you approve the bid of Schultz Excavating for $314,267.

Thank you for your consideration.

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

# City of Muskegon
## Recreational Bike Path, Phase IV
## Bids Received: June 10, 2003 at 2:00 p.m.

| Item | Units | Est. Qty. | Quantum Construction, P.O. Box 321, Douglas, MI 49406 — Unit Price | Total | Milbocker & Sons, Inc., 1256 29th St, Allegan, MI 49010 — Unit Price | Total | Wagenmaker Construction, 332 River Rd., Coopersville, MI 49404 — Unit Price | Total |
|---|---|---|---|---|---|---|---|---|
| Mobilization, Max. $20,000 | lump sum | 1 | $15,000.00 | $15,000.00 | $20,000.00 | $20,000.00 | $15,000.00 | $15,000.00 |
| Bicycle Path, Grading | meter | 1540 | $45.25 | $69,685.00 | $69.00 | $106,260.00 | $50.00 | $77,000.00 |
| Bicycle Path, Aggregate | metric ton | 2000 | $18.50 | $37,000.00 | $13.50 | $27,000.00 | $20.00 | $40,000.00 |
| Bicycle Path, Bit | metric ton | 800 | $48.75 | $39,000.00 | $44.82 | $35,856.00 | $50.00 | $40,000.00 |
| Pedestrian Structure | lump sum | 1 | $38,750.00 | $38,750.00 | $41,000.00 | $41,000.00 | $80,000.00 | $80,000.00 |
| Boardwalk | meter | 18.3 | $2,155.00 | $39,436.50 | $2,000.00 | $36,600.00 | $2,000.00 | $36,600.00 |
| Fence, Chain Link, 1,800 mm | meter | 120 | $50.00 | $6,000.00 | $42.69 | $5,122.80 | $50.00 | $6,000.00 |
| Riprap, Plain | square meter | 100 | $65.00 | $6,500.00 | $26.00 | $2,600.00 | $80.00 | $8,000.00 |
| Timber Retaining Wall | meter | 230 | $140.00 | $32,200.00 | $200.00 | $46,000.00 | $400.00 | $92,000.00 |
| Site Preparation | lump sum | 1 | $22,000.00 | $22,000.00 | $500.00 | $500.00 | $47,000.00 | $47,000.00 |
| Picea Pungens, 1,500 mm | each | 22 | $160.00 | $3,520.00 | $250.00 | $5,500.00 | $500.00 | $11,000.00 |
| Topsoil Surface, Furn, 100 mm | square meter | 6200 | $2.40 | $14,880.00 | $2.00 | $12,400.00 | $1.00 | $6,200.00 |
| Seeding, Mixture TGM | kilogram | 160 | $20.00 | $3,200.00 | $6.43 | $1,028.80 | $40.00 | $6,400.00 |
| Watering and Cultivating, First Season | lump sum | 1 | $3,000.00 | $3,000.00 | $2,500.00 | $2,500.00 | $5,000.00 | $5,000.00 |
| Erosion Control, Silt Fence | meter | 200 | $10.00 | $2,000.00 | $10.00 | $2,000.00 | $15.00 | $3,000.00 |
| Traffic Control | lump sum | 1 | $4,500.00 | $4,500.00 | $4,800.00 | $4,800.00 | $4,000.00 | $4,000.00 |
| Signage | lump sum | 1 | $7,000.00 | $7,000.00 | $5,000.00 | $5,000.00 | $4,000.00 | $4,000.00 |
| | | | TOTAL | $343,671.50 | TOTAL | $354,167.60 | TOTAL | $481,200.00 |
| | | | Bid As Read | $343,649.50 | Bid As Read | $354,167.60 | Bid As Read | $481,200.00 |

# City of Muskegon
## Recreational Bike Path, Phase IV
## Bids Received: June 10, 2003 at 2:00 p.m.

| | | | Schultz Excavating<br>5565 6th St<br>Ludington, MI 49431-0683 | | McCormick Sand, Inc.<br>995 S. 102nd Ave.<br>Shelby, MI 49455 | | Anlaan Corporation<br>P.O. Box 333<br>Ferrysburg, MI 49409 | |
|---|---|---|---|---|---|---|---|---|
| Item | Units | Est. Qty. | Unit Price | Total | Unit Price | Total | Unit Price | Total |
| Mobilization, Max. $20,000 | lump sum | 1 | $20,000.00 | $20,000.00 | $10,000.00 | $10,000.00 | $20,000.00 | $20,000.00 |
| Bicycle Path, Grading | meter | 1540 | $34.60 | $53,284.00 | $55.82 | $85,962.80 | $53.00 | $81,620.00 |
| Bicycle Path, Aggregate | metric ton | 2000 | $16.50 | $33,000.00 | $13.20 | $26,400.00 | $15.00 | $30,000.00 |
| Bicycle Path, Bit | metric ton | 800 | $47.00 | $37,600.00 | $48.74 | $38,992.00 | $48.50 | $38,800.00 |
| Pedestrian Structure | lump sum | 1 | $42,000.00 | $42,000.00 | $40,453.00 | $40,453.00 | $55,000.00 | $55,000.00 |
| Boardwalk | meter | 18.3 | $2,310.00 | $42,273.00 | $1,998.03 | $36,563.95 | $2,000.00 | $36,600.00 |
| Fence, Chain Link, 1,800 mm | meter | 120 | $48.00 | $5,760.00 | $47.80 | $5,736.00 | $45.00 | $5,400.00 |
| Riprap, Plain | square meter | 100 | $68.25 | $6,825.00 | $38.00 | $3,800.00 | $50.00 | $5,000.00 |
| Timber Retaining Wall | meter | 230 | $136.50 | $31,395.00 | $153.29 | $35,256.70 | $120.00 | $27,600.00 |
| Site Preparation | lump sum | 1 | $9,600.00 | $9,600.00 | $5,500.00 | $5,500.00 | $500.00 | $500.00 |
| Picea Pungens, 1,500 mm | each | 22 | $140.00 | $3,080.00 | $145.00 | $3,190.00 | $250.00 | $5,500.00 |
| Topsoil Surface, Furn, 100 mm | square meter | 6200 | $2.10 | $13,020.00 | $3.70 | $22,940.00 | $3.50 | $21,700.00 |
| Seeding, Mixture TGM | kilogram | 160 | $28.00 | $4,480.00 | $4.00 | $640.00 | $6.43 | $1,028.80 |
| Watering and Cultivating, First Season | lump sum | 1 | $3,400.00 | $3,400.00 | $3,200.00 | $3,200.00 | $2,500.00 | $2,500.00 |
| Erosion Control, Silt Fence | meter | 200 | $4.50 | $900.00 | $10.00 | $2,000.00 | $9.00 | $1,800.00 |
| Traffic Control | lump sum | 1 | $5,400.00 | $5,400.00 | $3,000.00 | $3,000.00 | $1,975.00 | $1,975.00 |
| Signage | lump sum | 1 | $2,250.00 | $2,250.00 | $5,940.00 | $5,940.00 | $2,875.00 | $2,875.00 |
| | | | TOTAL | $314,267.00 | TOTAL | $329,574.45 | TOTAL | $337,898.80 |
| | | | Bid As Read | $314,267.00 | Bid As Read | $329,574.45 | Bid As Read | $337,898.80 |

City of Muskegon
Recreational Bike Path, Phase IV
Project Number G01119CD

Addendum No. 2

Date: June 6, 2003

ADDENDUM
PAGE 1 OF 1

City of Muskegon
933 Terrace
Muskegon, MI 49443

ENGINEER: Fishbeck, Thompson, Carr & Huber, Inc.
1515 Arboretum Drive, SE
Grand Rapids, MI 49546

DRAWING REVISION NO.: None

SHEETS ISSUED HEREWITH: None

SPECIFICATION SECTIONS ISSUED HEREWITH: None

SKETCHES ISSUED HEREWITH: None

BIDS DUE: June 10, 2003, at 2 p.m.—ISSUED TO ALL BID SET HOLDERS

---

This Addendum is a part of the Contract Documents and modifies the previously issued Bidding Documents. Acknowledge receipt of this Addendum in the space provided on the Bid form; failure to do so may result in rejection of the Bid.

ITEM NO. 1:

The Davis Bacon Wage Rates have not changed from the publication originally included in the contract documents. The original rates dated April 4, 2003, are current.

ITEM NO. 2:

Meeting Minutes from the Pre-Bid Conference on June 3, 2003.

ITEM NO. 3:

MDOT Prequalification Requirements:

Bidders must meet the requirements of MDOT prequalification 374Ea, 374E, or 374Cb. MDOT requires the contractor to be prequalified as a condition to receive bids, and the contractor must be able to prove their prequalification rating and expiration date as established by MDOT.

END OF ADDENDUM

File in Bike Trail
Phase IV

MSA
6/11/03

Schultz Excavating
5565 6th Street, P.O. Box 683
Ludington, Michigan 49431-0683
Phone 231-845-7125 Fax 231-843-4688

June 11, 2003

Mr. Mohammed Al-Shatel
City of Muskegon

**VIA FAX 231-727-6904**

Dear Sir:

I am writing in regards to the bid we submitted on 6/10/03 for the City of Muskegon Recreational Bike Path Phase IV. During the eleventh hour rush to complete the bid form, our engineer failed to acknowledge our receipt of Addendum #2. I am letting you know that the addendum was received and the spirit and intent of the addendum was reflected in our bid price of $314,267.00; we simply failed to note its receipt in our bid proposal. Be assured that by awarding this contract to Schultz Excavating, the City will not incur any additional cost due to our oversight in acknowledging Addendum #2.

Thank you for your consideration.

Respectfully submitted,

Brian E. Schultz

cc: Kerri Miller, F, T, C & H

2003-52 a)

**Date:** **June 24, 2003**

**To:** **Honorable Mayor and City Commissioners**

**From:** **Community and Neighborhood Services Department**

**RE:** **Approval of Resolution, Purchase Agreement and Quit Claim for the Sale of 850 Wood.**

---

SUMMARY OF REQUEST: To authorize the Mayor and City Clerk to sign the resolution to sell the home, and approve the purchase agreement between David D. Sperry and the City of Muskegon for the purchase of the city-owned home located at 850 Wood a.k.a. "Wood Street Revival" for the price of $55,000.

The structure at 850 Wood was totally rehabilitated by the Community and Neighborhood Services Department under its HOME rehabilitation program. The CNS office considers the rehabilitation of 850 Wood a.k.a. "Wood Street Revival" to be a major contribution to the blight fight efforts by the City of Muskegon in area 11.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the sale and the purchase agreement to sell 850 Wood a.k.a. "Wood Street Revival" to David D. Sperry and direct the Mayor and City Clerk to sign the quit claim.

2003-52 (a)

MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE SALE OF
CITY-OWNED PROPERTY AT 850 Wood

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approved the sale of the totally rehabilitated home located at 850 Wood to be used as a single family owner-occupied home to David D. Sperry for the price of $60,000 in its current rehabilitated condition.

Adopted this 24 day of June, 2003

Ayes: 7

Nays: 0

By ____________________
Steve J. Warmington, Mayor

By Gail A. Kundinger
Gail A. Kundinger, City Clerk

*BW_Resolution*

CERTIFICATION

This resolution was adopted at a regular meeting of the City Commission, held on June 24, 2003 The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kundinger

Gail A. Kundinger, City Clerk

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the **CITY OF MUSKEGON**, a municipal corporation, whose address is 933 Terrace Street, Muskegon, MI 49440,

QUIT CLAIMS TO: **David D. Sperry**, of 1346 Horton Road, Muskegon, Michigan 49445,

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

**City of Muskegon revised plat of City of Muskegon revised Plat of 1903 W. 114 Ft Lot 5 Block 46**

for the sum of **Sixty Thousand and no/100 Dollars ($60,000.00)**

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

Dated this 24th day of June, 2003.

CITY OF MUSKEGON

By ____________
Stephen J. Warmington, Mayor

and Gail A. Kundinger
Gail A. Kundinger, MMC, City Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 1 day of July, 2003, by Stephen J. Warmington and Gail A. Kundinger, MMC, Mayor and City Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

JoAnn M. Krukowski
JoAnn M Krukowski
Notary Public, Muskegon County, Michigan
My commission expires: 5-13-05

PREPARED BY:
John C. Schrier
Parmenter O'Toole
175 W. Apple Ave., P. O. Box 786
Muskegon, MI 49443-0786
Telephone: 616/722-1621

SEND SUBSEQUENT TAX BILLS TO: Grantee WHEN RECORDED RETURN TO: Grantee

# PURCHASE, SALE, AND LOAN AGREEMENT

THIS PURCHASE, SALE, AND LOAN AGREEMENT ("Agreement") is made as of the 10th day of June, 2003 between CITY OF MUSKEGON ("City"), David D. Sperry, ("Purchaser") and Fifth Third Bank, ("Lender")

## Background

A. City is the owner of certain real property situated in the City of Muskegon, County of Muskegon, State of Michigan and described as provided for in Exhibit A.

B. City is prepared to sell, transfer and convey the property to Purchaser subject to conditions provided for in this Agreement.

C. Lender is prepared to lend to Purchaser $ 55,000.00 consistent with a commitment letter from Lender to Purchaser dated June 10, 2003 and attached as Exhibit B.

## Terms and Conditions

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED IN THIS AGREEMENT, AND INTENDING TO BE LEGALLY BOUND BY IT, THE PARTIES AGREE AS FOLLOWS:

1. City agrees to sell, transfer and convey the property to Purchaser, after rehabilitation of the single-family residential unit provided for in Exhibit A. The purchase price of the property is Sixty Thousand Hundred Dollars ($ 60,000.00) (the "Purchase Price"). The Purchase Price shall be satisfied as follows:

1.1 Upon closing, Lender shall deliver to Transnation a cash deposit, or any other form of payment acceptable to Transnation, the amount of Fifty-five Thousand Dollars ($ 55,000.00 ). The bank's obligation to tender such monies is contingent upon satisfaction of the other terms and conditions of this Agreement.

1.2 The balance of the Purchase Price shall be satisfied by Purchaser executing a promissory note and mortgage in favor of the City of Muskegon. The City of Muskegon mortgage is junior to the mortgage of Lender, so long as the Lender's mortgage is in a form acceptable to City.

2. Covenants, Representations, and Warranties of City. City covenants, represents and warrants to Purchaser, Lender as follows:

2.1 City is a municipal corporation, duly organized and validly existing and in good standing under the laws of the State of Michigan; the City has full power and authority to enter into and perform its obligations under this Agreement; that the execution, delivery and performance of this Agreement by its mayor and clerk have been duly authorized by appropriate action of its city commission and is not in violation of the city ordinances or state law applicable to cities, or other law or any laws, order, judgment, agreement that is binding upon the City.

2.2 The property is not subject to any other security interest, lien or incumbent created or arising by reason of any act or omission of the City.

2.3 Contemporaneous with execution of this Agreement and deposit of monies by Purchaser with Transnation, City shall execute and deliver to Transnation a quitclaim deed from City to Purchaser in a form and content consistent with Exhibit C.

2.4 Upon closing, City agrees to lend an amount not to exceed Five Thousand Dollars ($ 5,000.00 ). The loan shall be evidenced by execution by Purchaser of a promissory note, in a form and substance consistent with Exhibit D and mortgage, in a form and substance consistent with Exhibit E. City's mortgage shall be recorded junior to Lender's mortgage so long as the Lender's mortgage is in a form acceptable to City and in an amount not to exceed Fifty Five Thousand Dollars ($ 55,000.00 ).

3. Purchaser's Covenants, Representations and Warranties. The Purchaser represents and warrants that:

3.1 The property is being purchased by the Purchaser for use as [his/her/their] personal residence; that all financial statements and other information concerning the Purchaser are true and accurate in all material respects; that the Purchaser is not insolvent; and that this Agreement constitutes the valid and binding obligation of the Purchaser, enforceable in accordance with its term.

3.2 Purchaser acknowledges that upon closing, Lender shall have no obligation to lend monies in excess of that stated in Exhibit B. Purchaser further acknowledges that City has no obligation to lend money in excess of $ Five Thousand Dollars ($ 5,000.00 ).

3.3 At closing, Purchaser agrees to execute a promissory note and mortgage in favor of Lender in the amount of Fifty Five Thousand Two Hundred Dollars ($ 55,000.00 ) and such other documents as called for in Exhibit B.

3.4 At closing, Purchaser shall execute promissory note and mortgage, in the form as attached as Exhibits D and E in an amount not to exceed Five Thousand Dollars ($ 5,000.00) and as more fully calculated pursuant to this Agreement.

4. Lender's Covenants, Representations and Warranties. The Lender represents and warrants that:

4.1 The Lender is a Michigan corporation, duly organized and validly existing and in good standing under the laws of the State of Michigan; that the Lender has full power and authority to enter into and perform its obligations under this Agreement; that the execution, delivery and performance of this Agreement have been duly authorized.

4.2 There is no material action, suit or proceeding pending or, to the best of Lender's actual knowledge, threatened against or affecting the proposed loan, or which would have a material affect on Lender's ability to lend money consistent with Exhibit B.

4.3 Lender agrees to lend to Purchaser the amount of Fifty Five Thousand Dollars ($ 55,000.00 ) upon closing. Conditions president to the loan are specified in Exhibit B.

4.4 Lender agrees that prior to closing, Lender shall prepare a promissory note and mortgage to be executed by Purchaser in a form acceptable to City. To the extent that the promissory note and mortgage are acceptable to City and in an amount not to exceed Fifty Five Thousand Dollars ($ 55,000.00 ), Lender's mortgage shall be a first priority, senior to City's mortgage and lien of lien of General Contractor or subcontractor.

5. No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated on the part of Purchaser does not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Purchaser by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Purchaser is a party or which is or purports to be binding upon Purchaser or which otherwise affects Purchaser, which will not be discharged, assumed or released at closing. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Purchaser in accordance with its terms.

6. Property "As Is". Except as expressly provided, Purchaser acknowledges and agrees that Purchaser is acquiring the property in its "AS IS" condition, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Other than as expressly set forth in this Agreement, City nor any agents, representatives, or employees of City have made any representations or warranties, direct or indirect, oral or written, express or implied, to Purchaser or any agents, representatives, or employees of Purchaser with respect to the condition of the property, its fitness for any particular purpose, or its compliance with any laws, and Purchaser is not aware of and does not rely upon any such representation to any other party. Purchaser acknowledges that Purchaser has had the opportunity to make such inspections (or have such inspections made by consultants) as it desires of the property and all factors relevant to its use, including, without limitation, the interior, exterior, and structure of all improvements, and the condition of soils and sub-surfaces.

7. Survey. Purchaser may obtain, at its cost and expense, such survey as it may desire within ten (10) days of execution of this Agreement. Purchaser shall have a period of ten (10) days from the date of Purchaser's receipt of the survey, but no later than thirty (30) days after execution of this Agreement, within which to approve or disapprove matters disclosed by the survey and to give written notice to City of any disapproval of it, indicating in reasonable detail the nature and reasons for Purchaser's objection. In the event Purchaser so notifies City of Purchaser's disapproval of the survey, City may elect (but shall have no obligation whatsoever) to cure any disapproved matter within thirty (30) days from receipt of such notice. Within five (5) days after receiving Purchaser's notice, City shall notify Purchaser whether City intends to effectuate such cure. In the event City does not elect to cure, or City elects to cure, but such cure is not completed within thirty (30) days, the Purchaser within five (5) days shall elect in writing to either waive such matter and proceed as provided or terminate this Agreement and receive a refund of the deposit.

8. Title Matters.

8.1 Title Report. City shall furnish to Purchaser an ALTA title report or commitment, with standard exceptions, in the amount of the Purchase Price from Transnation with respect to the property. Purchaser shall have a period of five (5) days after execution of this Agreement, or ten (10) days after receipt of title report, within which to examine the title report. If Purchaser objects to any matters disclosed in the title report, Purchaser shall, within the time period indicated, notify City in writing, specifying the objectionable matters. City may elect (but shall have no obligation whatsoever) to cure any such matters within thirty (30) days from receipt of such notice. Within five (5) days after receiving Purchaser's notice, City shall notify Purchaser whether City intends to effectuate such cure. In the event City does not elect to cure, or City elects to cure, but such cure is not completed within thirty (30) days, the Purchaser within ten (10) days shall elect in writing to either waive such matter and proceed as provided in this Agreement or terminate it and receive a refund of the deposit.

8.2 Defects in Title. In the event City shall not be able to convey title to the property on the date of closing in accordance with the provisions of this Agreement, the Purchaser shall have the option, exercisable by written notice to City at or prior to closing, of (1) accepting at closing such title as City is able to convey and/or waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, or (2) declining to proceed to closing. In the latter event, except as expressly set forth in this Agreement, all obligations, liabilities and rights of the parties under this Agreement shall terminate, and the deposit and additional deposit shall be returned to Purchaser.

9. Pre-Closing Obligations; Deliveries.

9.1 The closing under this Agreement (the "Closing") shall take place on or before June 30 , 2003, or within five (5) days of satisfaction of all conditions relevant to Closing, whichever is sooner, at the offices of Transnation unless otherwise agreed to in writing by both City and Purchaser.

9.2 For Closing, City shall deliver the following:

9.2.1 A Quit Claim Deed to the real property, duly executed and acknowledged by City and in proper form for recording, conveying fee simple title to the property to Purchaser, subject only to easements, restrictions and/or rights-of-way of record.

9.2.2 Copies of current real estate tax bills, if any.

9.2.3 An assignment of any operating licenses, permits and approvals, if any, relating to the property possessed by City.

9.2.4 A Bill of Sale for any personal property, if any.

9.2.5 An affidavit of title, and such other documents as may be required by Transnation.

9.2.6 All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated.

9.3 For Closing, Purchaser shall deliver the following:

9.3.1 In accordance with Transnation's instructions, a certified check or wire transfer in the amount required.

9.4 For Closing, Lender shall deliver the following:

9.4.1 In accordance with Transnation's instructions, a certified check or wire transfer in the amount required to cover its expenses and the amount indicated in the commitment letter, attached as Exhibit B.

9.4.2 A Promissory Note and Mortgage , in a form acceptable to City, for execution by the Purchaser.

9.5 For Closing, General Contract shall deliver the following:

9.5.1 In accordance with Transnation's instructions, whatever documents are necessary to assure that all subcontractor's have been paid and that there are no liens, recorded or which could be recorded, which will not be satisfied at the time of closing.

9.5.2 In accordance with Transnation's instructions, whatever documents are necessary to assure that all monies owed to General Contractor will be satisfied at the time of closing.

10. Apportionment; Taxes; Expenses.

10.1 Taxes. City shall pay all taxes due through the Closing Date.

10.2 Expenses. Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated, including, without limitation, (1) all costs and expenses stated in this Agreement to be borne by a party, and (2) all of their respective broker's commissions, accounting, legal and appraisal fees. Purchaser, in addition to its other expenses, shall pay at Closing all recording charges incident to the recording of the deed for the property. City, in addition to its other expenses shall pay at Closing (1) all documentary stamps, deed stamps and realty transfer taxes, and (2) the cost of the owner's title insurance policy.

10.3 Closing Expenses. City and Purchaser shall share equally the cost of Transnation for acting as escrow agent leading up to Closing and Transnation's expenses relating to the Closing of this transaction. To the extent that Closing does not occur for reasons other than relating to paragraph 8 [Survey] or paragraph 9 [Title Matters], Transnation's fee shall be deducted from the Purchaser's deposit and the balance of the deposit returned to Purchaser. Upon indication that Closing will not occur, Transnation shall return the City's Quit Claim deed to the City.

11. Remedies.

11.1 If, prior to Closing, Purchaser breaches or fails to perform its pre-closing obligations under this Agreement, then City shall, as its sole remedy, be entitled to receive the deposit, plus all interest earned and accrued on it, as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of City against Purchaser by reason of such breach or failure. This Agreement shall then terminate and the parties shall be relieved of all further obligations and liabilities under it, except as otherwise expressly set forth.

Purchaser and City acknowledge that the damages to City resulting from Purchaser's breach would be difficult, if not impossible, to ascertain with any accuracy, and that the liquidated damage amount set forth in this Section represents both parties' efforts to approximate such potential damages.

11.2 If, prior to Closing, City breaches or fails to perform its pre-closing obligations under this Agreement, Purchaser may, as its only remedies, either (i) enforce specific performance of this Agreement against City, or (ii) terminate this Agreement and receive an immediate refund of the deposit.

11.3 If, prior to Closing, Lender breaches or fails to perform its pre-closing obligations under this Agreement, Purchaser or City may, as its remedies, either (i) enforce specific performance of this Agreement against Lender, or (ii) sue for damages related to the failure to lend monies consistent with Exhibit D.

11.4 If, prior to Closing, General Contractor breaches or fails to perform its pre-closing obligations under this Agreement, Purchaser or City may, as its remedies, either (i) enforce specific performance of this Agreement against Lender, or (ii) terminate this

Agreement and obtain another entity to complete performance. The cost of completion shall be borne by General Contractor.

12. Further Assurances. City and Purchaser each agrees to perform such other acts, and to execute, acknowledge and deliver, prior to, at or subsequent to Closing, such other instruments, documents and other materials as the other may reasonably request and as shall be necessary in order to effect the consummation of the transactions contemplated by it.

13. Possession. Possession of the property shall be surrendered by Purchaser at Closing.

14. Notices. All notices and other communications provided for shall be in writing and shall be sent to the address set forth below (or such other address as a party may designate for itself by notice to the other parties as required) of the party for whom such notice or communication is intended:

14.1 If to City:

Director of Community and Neighborhood Services
City of Muskegon
933 Terrace Street
Muskegon, MI 49440

with a copy to:

John C. Schrier
Parmenter O'Toole
175 W. Apple Avenue
P.O. Box 786
Muskegon, MI 49443-0786

14.2 If to Purchaser:

David D. Sperry
1346 Horton Road
North Muskegon, MI 49445

14.3 If to Lender:

Fifth Third Bank
Arnette Weaver-Brown
Terrace-Downtown Branch
Muskegon, MI 49443

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by tele-copy, with an original by regular mail. Any such notice or communication shall be effective when sent.

15. Miscellaneous.

15.1 Assignment. Purchaser may not assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual, entity or other person without the consent by City. Purchaser recognizes that there are specific guidelines as to acceptable purchasers. As such, City reserves the absolute right to reject any individual or entity which is being proposed to assign the obligations and benefits from Purchaser.

15.2 Governing Law. Parties in Interest. This Agreement shall be governed by the law of the State of Michigan and shall bind and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, assigns and personal representatives, and is not intended to and shall not benefit any third persons not party to this Agreement.

15.3 Time of Essence. Time is of the essence in this Agreement.

15.4 Headings. The headings preceding the text of the paragraphs and subparagraphs are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

15.6 Survival. Each of the warranties, representations and covenants of City and Purchaser shall survive for a period of eighteen (18) months after the Closing and delivery of the deed and other closing documents by City to Purchaser, and shall not be deemed to have merged with this Agreement, and any action on it must be commenced within 18 months after the Closing or shall be forever barred.

15.7 Entire Agreement; Amendments. This Agreement and the Exhibits set forth all of the promises, covenants, agreements, conditions and undertakings between the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**City: CITY OF MUSKEGON**

By: ______________________
Stephen J. Warmington, Mayor

And: Gail A. Kundinger
Gail A. Kundinger, City Clerk

**PURCHASER:** David Sperry
**Dave Sperry**
**1346 Horton Road**

**North Muskegon, MI 49445**

**LENDER: Fifth Third Bank**

By: Arnette Weaver-Brown
Arnette Weaver-Brown
CRA Loan, Originator

## LIST OF EXHIBITS TO BE ATTACHED

A. LEGAL DESCRIPTION

B. LENDER'S COMMITMENT LETTER

C. QUIT CLAIM DEED FROM CITY TO PURCHASER

D. PROMISSORY NOTE FROM PURCHASER TO CITY OF MUSKEGON

E. MORTGAGE FROM PURCHASER TO CITY OF MUSKEGON

Exhibit A
Legal Description

**City of Muskegon revised plat of 1903**
**West 114 Feet of Lot 5 Block 46**

**PARMENTER O'TOOLE**
*Attorneys at Law*

175 West Apple Avenue ▪ P.O. Box 786 ▪ Muskegon, Michigan 49443-0786
Phone 231.722.1621 ▪ Fax 231.722.7866 or 231.728.2206
*www.Parmenterlaw.com*

August 27, 2003

Gail A. Kundinger, MMC
City Clerk
City of Muskegon
933 Terrace
P.O. Box 536
Muskegon, MI 49443-0536

**Re: David D. Sperry**

Dear Ms. Kundinger:

Enclosed please find recorded Mortgage involving David D. Sperry.

Very truly yours,

John C. Schrier

John C. Schrier
Direct: 231.722.5401
Fax: 231.728.2206
E-Mail Address: jcs@parmenterlaw.com

Enclosure

c: Wilmern Griffin

**Commission Meeting Date: June 24, 2003**

2003-52 b)

| | |
|---|---|
| **Date:** | **June 16, 2003** |
| **To:** | **Honorable Mayor & City Commission** |
| **From:** | **Community and Neighborhood Services Department / Inspection** |
| **RE:** | **Acceptance of purchase agreement from the Muskegon Housing Commission** |

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SUMMARY OF REQUEST: To accept the purchase agreement from the Muskegon Housing Commission concerning seven Housing Commission homes (a.k.a. Turnkey 3). The specific addresses of the homes are:

| | | | |
|---|---|---|---|
| 1668 Beidler | 284 Iona | 361 Oak | 383 Catherine |
| 747 Marcoux | 214 Washington | 404 Washington | |

The total cost to purchase is seven dollars ($7.00). The City has agreed to acquire all the homes, except 1950 Terrace.

The City of Muskegon will demolish 1950 Terrace St, but the Housing Commission will retain ownership. The City will bill the Housing Commission for the cost of the demolition.

Four of the properties 1668 Beidler, 361 Oak, 284 Iona and 404 Washington will be demolished. New homes will be constructed, starting with Biedler and Oak. The City HOME funds will cover the demolition and new construction cost.

The other sites will be demolished with CDBG fund and 1950 Terrace will be "torn" down with general funds.

FINANCIAL IMPACT: The seven dollars will be taken from the general fund.

BUDGET ACTION REQUIRED: None at this time.

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

COMMITTEE RECOMMENDATION: None needed.

**DRAFT**
**05/15/03**

# Real Estate Purchase Agreement

This Agreement is made ______________________ ___, 2003, by and between **Muskegon Housing Commission**, of 1080 Terrace Street, Muskegon, Michigan ("Seller"), and the **City Of Muskegon**, of 933 Terrace Street, Muskegon, Michigan 49440 ("Buyer").

***Background***

A. The Buyer and Seller have selected several houses located on property owned by Seller for demolition.

B. The Buyer has agreed to perform the demolition and the Seller has agreed to sell some of the properties to Buyer as part of the arrangement relating to the demolition of the structures located on such properties pursuant to the terms set forth in this Agreement.

**Therefore, the parties agree as follows:**

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title and interest in all adjoining public ways, the real property located in the City of Muskegon at 1668 Beidler, 284 Iona, 361 Oak, 383 Catherine, 747 Marcoux, 214 Washington, and 404 Washington (collectively "Premises"), which are legally described on **Exhibit A**, and are subject to the reservations, restrictions and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law.

2. **Purchase Price and Manner of Payment.** The consideration for acquisition of the Premises shall be Seven and no/100 Dollars ($7.00) payable in cash or by City check to Seller at Closing and other valuable consideration.

3. **Demolition of Structures**. In addition to the purchase price as stated above and *as soon as administratively possible after Closing*, Buyer agrees to demolish all structures located on the Premises in consideration for the transfer of the property. Buyer shall pay for the full cost of demolition on the Premises. In addition, Buyer shall demolish the structure located at 1950 Terrace Street with Seller reimbursing Buyer for the cost of demolition of the structure or structures located on the property at 1950 Terrace. Buyer will accept bids from private companies for the cost of demolition for all of eight structures. The Buyer will hire the company with the lowest qualified overall bid for the entire project. Seller will be responsible to pay the cost of demolition for 1950 Terrace paid by Buyer, whether or not the cost for that particular property was the lowest among the bidders. Upon payment by Buyer for the demolition of 1950 Terrace, Buyer shall provide Seller with an invoice showing the cost paid by the Buyer for such demolition. Payment from the Seller shall be due 10 days after receipt of such invoice from the Buyer.

4. **Assessments and Fees.** All assessments, fees or costs, which are due and payable at the time of Closing, shall be paid by Seller prior to or at Closing. All special assessments that become due and payable after Closing shall be the responsibility of Buyer.

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

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

7. **Survey.** Buyer has obtained a survey and is satisfied with same, provided no change has been made to the property since the date of the survey.

8. **Environmental Matters.** Seller represents and warrants to Buyer as follows:

a. To the best of Seller's knowledge, the Premises have been used and operated by Seller in compliance with all applicable federal, state and local laws and regulations related to air quality, water quality, waste disposal or management, hazardous or toxic substances, and the protection of health and the environment.

b. Seller has not disposed of any hazardous or toxic substances on or in the Premises, but the premises may have been characterized as part of a "facility" under Michigan law. The Premises may constitute a facility because of historic fill materials in or in the vicinity of the Premises. Seller is unaware of any plume of contaminated groundwater in or affecting the Premises.

c. The Premises does not include any "underground storage tank," as that term is defined by state or federal law, to the best of Seller's knowledge.

Such representations and warranties shall be deemed to have been made again by Seller as of the Closing. Seller agrees to indemnify Buyer and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, but not limited to, reasonable attorneys' fees, resulting from any misrepresentation or breach of the warranties set forth in this paragraph. The representations, warranties and covenants set forth in this paragraph shall survive the Closing.

9. **Condition of Premises and Examination by Buyer**. SUBJECT TO THE ABOVE REPRESENTATIONS, NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES SHALL OPERATE BETWEEN SELLER AND BUYER. BUYER UNDERSTANDS AND AGREES THAT THE PREMISES ARE TAKEN "AS IS," SUBJECT TO THE EXPRESS COVENANTS, CONDITIONS AND/OR EXPRESS WARRANTIES CONTAINED IN THIS PURCHASE AGREEMENT, ALSO SUBJECT TO THE WARRANTY OF SELLER THAT NO HAZARDOUS SUBSTANCES HAVE BEEN PLACED ON THE PREMISES. BUYER FURTHER SAYS THAT IT HAS PERSONALLY INSPECTED THE PREMISES AND IS SATISFIED WITH THE CONDITION OF THE LAND, TAKING INTO ACCOUNT THE REPRESENTATIONS OF SELLER.

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

11. **Closing.** The closing date of this sale shall be on or before ________________, 2003 ("Closing"). The Closing shall be conducted at LandAmerica Transnation Title, Muskegon, Michigan. If required by LandAmerica Transnation Title, the parties shall execute an IRS closing report at the Closing.

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

13. **Affidavit of Title.** If required by LandAmerica Transnation Title, Seller shall deliver to Buyer an executed Affidavit of Title at closing.

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

15. **Costs.** Seller shall be responsible to pay the Michigan transfer tax, *if any*, in the amount required by law. Seller shall be responsible to pay for the recording of any instrument which must be recorded to clear and convey marketable title to the extent required by this Agreement or by the title insurance company. Buyer shall pay for the cost of recording the quit claim deed to be delivered at Closing and the title company fees for Closing.

16. **General Provisions.**

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

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

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

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

e. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their heirs, executors, administrators, officers, directors, employees, agents, representatives, successors, and assigns.

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

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

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

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

WITNESSES:

**Seller**: Muskegon Housing Commission

By: Edward Horne
Name: Edward Horne
Title: Chairman - Board of Commissioners
Date: June 5, 2003

Carmela Wiseman

**Buyer**: City Of Muskegon, a municipal corporation

By: ______
Name: Stephen J. Warmington
Title: Mayor
Date: ______

By ______
Name: Gail A. Kundinger, MMC
Title: Clerk
Date: ______

**MUSKEGON HOUSING COMMISSION**
**RESOLUTION 2003-18**

On February 18, 2003 the Muskegon Housing Commission agreed to the terms and conditions identified by staff and the City of Muskegon for sale and demolition of eight (8) Turnkey III properties pending approval from HUD. A Real Estate Purchase Agreement has been drafted by City Attorney John Schrier relating to the demolition of the properties. At its June 5, 2003 the Muskegon Housing Commission Board agreed to allow staff and attorney to execute this agreement.

| AYES | NAYS | ABSENT |
|---|---|---|
| Edward Horne<br>Gregory Kirksey<br>Maxine Lenear<br>Mary Jo McCann | | |

Dated: June 5, 2003

Certified: ______________________
Edward Horne, Board Chairperson

______________________
Yvonne Morrisey, Interim Director

2003-18.RES

284 Iona

383 Catherine

1950 Terrace

404 Washington


747 Marcoux

361 Oak

214 Washington

1668 Beidler

**Commission Meeting Date: June 24, 2003**

**Date:** **June 16, 2003**

**To:** **Honorable Mayor & City Commission**

**From:** **Community and Neighborhood Services Department**

**RE:** **Approval of Contract with A-1 Professional Construction**

---

SUMMARY OF REQUEST: To accept the low bid submitted by A-1 Professional of Grand Rapids, MI for the lead base abatement at the city-owned property located at 503 Octavius for $27,475.

After the abatement is competed, the home will be totally rehabilitated and sold to a qualified family as a single-family owner-occupied structure. This project is under the Community and Neighborhood Services housing rehabilitation program entitled "Operation Jackson Hill Urban Renewal Project #1 (Wgirtt)

FINANCIAL IMPACT: The cost of this project will be financed with 2001 HOME funds.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the contract with A-1 for $27, 475 to complete the lead base paint abatement at 503 Octavius

COMMITTEE RECOMMENDATION: None required.

503 Octavius

# Lead Base Abatement
# Bid Results

| | |
|---|---|
| A-1 Professional Construction<br>2600 Miller N. W.<br>Grand Rapids, MI | $27,475 |
| Success Enterprises<br>5263 Apple Ave<br>Muskegon, MI | $33,600 |
| West Michigan Construction<br>2600 Patterson Ave S.E.<br>Grand Rapids, MI | $29,350 |

# Lead Base Abatement
# Specification for 503 Octavius

| | |
|---|---|
| 1. Siding Install (Vinyl) + Garage | $8,800 |
| 2. Soffit Install | $3,850 |
| 3. Fasica Install | $670 |
| 4. Trim-Doors & Windows | $2,180 |
| 5. Remove and Replace Windows (24) | $9,000 |
| 6. Rototill 3-feet around home and add black top-soil and landscaping mulch | $1,350 |
| 7. Properly clean or prepare floor area throughout the house for clearance | $750 |
| 8. Window reframing ____(4) bedrooms require egress windows | $500 |
| 9. Reframe 3 windows to make level | $375 |

*Note:

All measurements are the responsibility of the contractor

Total $27,475

A-1 Professional Construction Inc.
2600 Miller N.W.
Grand Rapids, Mi 49544
(616) 361-9200
(616) 364-9194 (FAX)

# Lead Base Abatement
# Specification for 503 Octavius

| | | |
|---|---|---|
| 1. | Siding Install (Vinyl) + Garage | $9,900.00 |
| 2. | Soffit Install | |
| 3. | Fasica Install | #2 + #3 together $2,100.00 |
| 4. | Trim-Doors & Windows | $1,200.00 |
| 5. | Remove and Replace Windows (24 | $13,800.00 |
| 6. | Rototill 3-feet around home and add black top-soil and landscaping mulch | $900.00 |
| 7. | Properly clean or prepare floor area throughout the house for clearance | $850.00 |
| 8. | Window reframing ____(4) bedrooms require egress windows | $600.00 |

***Note:**

All measurements are the responsibility of the contractor

WEST MICHIGAN CONSTRUCTION CO.
2600 PATTERSON SE
GRAND RAPIDS, MI 49546
(616) 956-1200

**SUCCESS ENTERPRISE**
**&**
**ENVIRONMENTAL SERVICES**
2722 E. Broadway
Muskegon, MI 49444
Bus: (231) 777-3538 or (231) 773-6164
Fax: (231) 773-5586

Date: May 12, 2003

Subject: Lead bid only

Regarding: 503 Octavius St
Muskegon, MI

Bid based on recommendation by AAA Lead Inspection.
Recommendation calls for full Abatement.

| | | |
|---|---|---|
| 1) | Siding | $10,500.00 |
| 2) | Removal & Replacement of (24) Windows | $ 9,600.00 |
| 3) | Exterior doors removal & replacement. (includes keylocks & dead bolts) (3) total | $ 1,800.00 |
| 4) | All outside wood must be wrapped in metal or soffit & facia & any other wood material wrapped. | $ 3,950.00 |
| 5) | Clearance__Steam clean all floors in home using T.S.P. Hepa Vac. to finish to pass clearance. | $ 1,400.00 |
| 6) | Remove old dog coup. Garage__before siding, frame with Lumber | $ 600.00 |
| 7) | Soil__Rototill 3-feet around home cover with landscaping fabric. Apply 3 inches of Mulch. | $ 2,150.00 |

Alternate option __ E.P.A. now requires Laboratory test of polluted soil If soil is polluted & fails test. Soil must be hauled to Detroit at $650.00 per 55 gal. drum. Labeled with a E.P.A. Sticker & hauled by a certified Hazardous waste worker (Very expensive) Much cheaper to rototill & apply bark Both are fully approved.

| | | |
|---|---|---|
| 8) | Window reframing__(3) bedrooms require egress windows. Take out lead painted frames increase header to proper size. | $ 600.00 |
| | Total cost | **$33,600.00** |

*Bid is subject to walk-thru/to thoroughly cover all areas of lead. Before acceptance.

Thank-you
Michael Fehler

# LEAD BASE PAINT ABATEMENT AGREEMENT

This Lead Abatement Construction Agreement made as of the 24 day of June 2003 between the City of Muskegon (the "Owner") and **A-1 Professional Construction** ("Lead Abatement Contractor").

## BACKGROUND

A. Lead Abatement Contractor (LAC) and Owner agree that LAC shall abate the lead based paint hazards in the Bid Proposal for **503 Octavius** a single family residence (the "Residence") attached as Exhibit C pursuant to the Infill Program, according to terms of this Agreement.

**THEREFORE, the parties agree as follows:**

1. **Price.** The price for Lead Abatement Construction shall be Twenty Four Thousand Fifty Dollars **$ 27,475.00**("Price"). **The Price may change in the event the LAC and Owner, agree to change orders, modifications or extras, as defined below, in writing and signed by all the above.**

2. **Costs Included.** The Price shall include the cost of the building permit and all sales taxes incurred by Lead Abatement Contractor for materials purchased and installed in the Residence. The Price shall not include any other costs whatsoever associated with the construction of the Residence, including, but not limited to, utility bills, heating costs, sewer or water hook-up charges, trunkage fees, regional fees, or any other water, sewer or property tax assessments, each of which shall be Purchaser's sole responsibility.

3. **Payment of the Price.** The Price shall be paid in accordance with the following schedule ("Payment Schedule").

LAC may request draws from City of Muskegon acting as escrow agent. Draws may be requested no more than once per month. Requests for draws and documentation required will be in a format acceptable to the City, and shall include at a minimum lien waivers. The total amount of a draw may never exceed the percentage of completion, less a 10% holdback. The balance owed on the contract, including any holdback, shall be paid upon satisfactory results from a Full Clearance Assessment.

4. **Modifications/Extras.** No modifications to the Plans ("Modifications") or requests for additional construction ("Extras") shall be binding upon either party, unless the Modifications and/or Extras are set forth on a written change order that is signed by Lead Abatement Contractor and, City of Muskegon. The Change Order must provide a detailed description of the Modifications and/or Extras and the cost or credit to be charged. Where a Change Order increases or decreases the Price ("Adjusted Price"), the Adjusted Price shall be paid according to the remaining portion of the Payment Schedule.

5. **Possession.** Purchaser shall be entitled to possession of the Residence upon payment of the Price or Adjusted Price in full. Upon payment in full, Lead Abatement Contractor shall deliver to Owner a Full Clearance Assessment at contractor's expense a completed sworn statement and a full unconditional waiver of lien. Payment of the Price or Adjusted Price by Purchaser shall constitute the acceptance of the Residence.

6. **Estimated Completion Date.** Lead Abatement Contractor shall commence construction of the Residence within 30days from the date the parties sign this agreement ("Commencement Date"). Lead Abatement Contractor shall endeavor to complete the Residence within 4 weeks of the Commencement Date ("Completion Date"). Provided, that both the Commencement Date and the Completion Date may be extended as a result of circumstances beyond the control of General Contractor, including, but not limited to, delays caused by suppliers or subcontractors, delays for utility hook-ups, Acts of God, labor disputes, governmental inspections, regulations, or permit processes, material back orders, Purchaser's requests for Change Orders, fire, injury or disability to General Contractor or weather.

7. **General Contractor Conditions.** This Agreement is subject to and includes all of the Contractor Conditions attached to this Agreement as Exhibit A.

**General Contractor** – A-1 Abatement Construction

Dated: 6/25, 03

By: [signature]

Its: Builder

**Owner**– City of Muskegon

Dated: ________, ______

By: ______________________
Wilmern G. Griffin
It's: Director

**Witness**

Dated: ________, ______

By: ______________________
Oneata Bailey

## EXHIBIT A

## Contractor CONDITIONS

1. **General Contractor's Warranties.** All building materials used in the construction of the Residence shall be new. General Contractor guarantees its workmanship for a period of one year from the date of final completion. Within that period, General Contractor may replace, at its option, any materials incorporated into the Residence which are defective, provided the manufacturer's warranty is still in full force and effect and, in fact, the manufacturer honors that warranty. To make a claim under this warranty, Purchaser must give General Contractor written notice of any such defect in the workmanship and/or materials promptly upon discovery and not later than expiration of the one year warranty period. This warranty does not apply to workmanship or materials requiring repair or replacement because of normal wear and tear or natural settling. General Contractor shall turn over and transfer to City all manufacturer's warranties that are delivered directly to General Contractor by the manufacturer. All warranties under this agreement shall transfer upon the date of sale to Buyer as the City's successor in interest.

2. **License.** General Contractor is a residential General Contractor and a residential maintenance and alteration contractor and is required to be licensed under article 24 of Act 299 of the Public Acts of 1980, as amended, being sections 339.2401 to 399.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. A Plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended being sections 338.901 to 338.917 of the Michigan Compiled Laws. General Contractor is licensed by the State of Michigan as a licensed Michigan Contractor and maintains its license in good standing. General Contractor's License and ID numbers are 2102154577 _____ and________________, respectively.

3. **Laws, Ordinances and Regulations.** In connection with the construction of the Residence, General Contractor shall meet and comply with all applicable laws, ordinances, and regulations.

4. **Notice of Commencement.** Purchaser shall deliver a Notice of Commencement in accordance with the Michigan Construction Lien Act within ten days of this Agreement.

5. **Diligent Pursuit.** General Contractor shall diligently pursue its obligations under this Agreement. If Purchaser believes that General Contractor has failed to comply with this paragraph, it shall provide General Contractor not less than 15 days written notice of such non-compliance, a list of City specific complaints, and a reasonable time within which General Contractor shall cure any such reasonable complaints. Until City fully complies with the notice provisions set forth in this paragraph,

6. **Insurance.** City shall procure and maintain an "all risk" insurance policy and shall name General Contractor as an additional named insured. City shall provide General Contractor with evidence of such insurance upon request. General Contractor shall maintain a policy of General Contractor's insurance fully insuring the Residence from the date construction commences until the date of substantial completion. General Contractor shall provide Purchaser with evidence of such insurance upon request. Purchaser and General Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph.

2. **Miscellaneous.**

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

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

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

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

9.5 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 the Agreement.

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

9.7 No Discrimination. Discrimination on the basis of religion, race, creed, color, national origin, age, sex, marital status, or handicapped condition by either party in respect to the construction of the Residence is prohibited.

9.8 Assignment or Delegation. Neither General Contractor nor Purchaser may assign all or any part of this Agreement. Provided, that General Contractor may delegate all or any part of its obligations to perform the services under this Agreement, to any persons or entities that General Contractor, in its sole discretion, deems appropriate, including sub-contractors. Such delegation shall be at the sole expense of General Contractor unless otherwise provided.

9.9 Notices. All required or permitted written notices shall be deemed effective and duly given when: (i) personally delivered; (ii) sent by fax; (iii) one day after depositing in the custody of a nationally recognized receipted overnight delivery service; or (iv) two days after posting in the U.S. first class, registered or certified mail, postage prepaid, to the recipient party at the address as set forth at the outset of this Agreement, or to such other address as the recipient party shall have furnished to the sender in accordance with the requirements for the giving of notice.

9.10 Pronouns. For convenience, Purchaser has been referred to this Agreement sometimes in the singular and at other times in the plural.

**Lead Abatement Contractor** –
A-1 Professional Construction

Dated: 6/25, 03

A-1 Professional Construction-Contractor

**Owner** - City of Muskegon

Dated: 06/30, 03

Stephen J. Warmington, Mayor

Dated: 06/30, 03

Gail Kundinger, City Clerk

**EXHIBIT B**
**Legal Description**

City of Muskegon revised plat of 1903 N ½ Lot 9 Blk 149

# EXHIBIT C
## Plans and Specifications

**AGENDA ITEM NO. 2003-52 a)**

**CITY COMMISSION MEETING 6/24/03**

**TO**: Honorable Mayor and City Commissioners

**FROM**: Bryon L. Mazade, City Manager

**DATE**: June 17, 2003

**RE**: Veteran's Park Maintenance Agreement

**SUMMARY OF REQUEST**:

To approve an agreement with Muskegon County and the City of North Muskegon for the maintenance of Veteran's Park.

**FINANCIAL IMPACT**:

Approximately $16,000.

**BUDGET ACTION REQUIRED**:

A budget adjustment is necessary to accommodate this increase.

**STAFF RECOMMENDATION**:

To approve the agreement.

**COMMITTEE RECOMMENDATION**:

O:COMMON\DEPTMENT\ADMIN\AGNDAFRM
JMS - O: (VETERANS PARK-MAINT AGMT)

# Real Estate Maintenance Agreement

This Agreement is made __________________________, 2003, by and between **County of Muskegon ("County")**, of 990 Terrace Street, Muskegon, Michigan 49440, the **City of Muskegon ("Muskegon"),** of 933 Terrace Street, Muskegon, Michigan 49440, and the **City of North Muskegon ("North Muskegon"),** 1502 Ruddiman Drive, Muskegon, Michigan 49445.

***Background***

A. "County" is the owner of Veteran's Memorial Park.

B. The parties wish to enter into an agreement regarding the long-term maintenance of the park.

C. "Muskegon" has agreed to perform the physical maintenance of the property pursuant to the terms set forth in this Agreement.

D. "County", "North Muskegon", and "Muskegon" have agreed to fund said maintenance pursuant to the percentage rates set forth in this agreement.

**Therefore, the parties agree as follows:**

1. **General Agreement and Description of Premises.** "Muskegon" agrees to perform the physical maintenance of Veteran's Memorial Park. The maintenance will cover the entire 28 acres of land. The park is located on the Causeway at the east of Muskegon Lake, the southern boundary of the City of North Muskegon, and the northern boundary of the City of Muskegon.

2. **Maintenance.**

2.1 "Muskegon" will be responsible for the physical maintenance of the park by using the funds from each entity. "Muskegon" will perform this maintenance by either using its own personnel and equipment, or by contracting for this work.

2.2 Level of Maintenance. "Muskegon" will be responsible for the following maintenance activities:

a. Mowing, trimming, fertilizing, weed control and any other routine maintenance of the grass.
b. Trash and litter removal.
c. Maintaining the current irrigation system (replacing heads, repairing pumps, fixing leaks, cost of electricity, etc.).
d. Pruning trees and shrubs.
e. Maintenance of the parking lots.
f. Painting structures and fixtures.
g. Minor repairs to bridges and cannons (not including structural repairs).
h. Cost of electricity.
i. Maintenance and repair of the flagpoles.

3. **Funding and Payment.**

3.1 Primary Funding: If any county-wide millage becomes available that can be used for the maintenance of the park or if any additional veterans millage is levied for park maintenance purposes, then savings will be apportioned to all the funding entities and thereby reduce their costs on a pro rata basis.

3.2 Additional Funding: If there are costs in excess of those covered by section 3.1, the parties agree to provide funding for the maintenance of the park in according to the following percentage rates:

a. "County" 42.5%
b. "Muskegon" 42.5%
c. "North Muskegon" 15%

3.3 Payment: After the beginning of each January "Muskegon" shall submit to "County" and "North Muskegon" an invoice for maintenance work performed during the previous calendar year. Payment my County and North Muskegon shall be made within thirty (30) days.

4. **Governing Body.** A board/committee will be established to determine the annual budget for the maintenance of the park, and to review and approve non-routine expenditures for such maintenance. This board/committee will be formed with one member from each City and County. Furthermore, the Muskegon County Department of Veteran's Affairs will appoint one person as a non-voting advisor to the board/committee.

4.1 Powers: Capital replacement or new capital items are not included in the maintenance activities of "Muskegon". The board/committee will review all proposals for capital replacement items or the placement of new capital items in the park. Capital improvements will not be made without Board approval. Capital items include, but are not limited to the following:

a. Bridges.
b. New and existing irrigation systems (including pumps).
c. New trees.
d. Concrete trail.
e. Fountain (including lighting).
f. Monuments.
g. Cannons.
h. Any new item added to the park after December 31, 2002, including, but not limited to the following:

    i. New parking lots.
    ii. Paved areas of parking lots
    iii. New flagpoles and monuments.
    iv. Retaining structure of ponds.
    v. New kiosks.
    vi. Additional trail(s).

i. Replacement of flagpoles.

5. **Term.** The maintenance agreement shall terminate on December 31st 2023. Payment for the year of 2023 shall be due January of 2024.

6. **General Provisions**.

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

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

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

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

e. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their heirs, executors, administrators, officers, directors, employees, agents, representatives, successors, and assigns.

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

g. **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by all parties.

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

WITNESSES: County of Muskegon

______________________________

By: ______________________________
Name: Paul Baade
Title: County Chair
Date: ______________________________

______________________________

By: ______________________________
Name: Susan Doriot
Title: County Clerk
Date: ______________________________

City of Muskegon, a municipal corporation

______________________________ By: ______________________________
Name: Stephen J. Warmington
Title: Mayor
Date: ______________________________

______________________________ By______________________________
Name: Gail A. Kundinger, MMC
Title: Clerk
Date: ______________________________

City of North Muskegon,
a municipal corporation

______________________________ By: ______________________________
Name: Chris Witham
Title: Mayor
Date: ______________________________

______________________________ By: ______________________________
Name: Ann Marie Cummings, CMC
Title: Clerk
Date: ______________________________

2003-52e)

**Date:** **June 10, 2003**

**To:** **Honorable Mayor and City Commission**

**From:** **Public Works – Water Filtration**

**RE:** **Vulnerability Assessment Proposal**

---

SUMMARY OF REQUEST:

To accept the proposal by Tetra Tech MPS to perform a Vulnerability Assessment of the City's water system as required by the Environmental Protection Agency.

FINANCIAL IMPACT:

Proposal cost of $28,000.00

BUDGET ACTION REQUIRED:

May require a budget amendment if funds cannot be found within other line items, as the proposal was not budgeted.

STAFF RECOMMENDATION:

Recommend Mayor and Commission endorses the proposal from Tetra Tech MPS and enters into contract for performance of the Vulnerability Assessment at a cost of $28,000.00

MEMORANDUM

MAY 28, 2003

TO: R. KUHN, DIRECTOR OF PUBLIC WORKS

FROM: R. VENEKLASEN, WATER FILTRATION PLANT

RE: VULNERABILITY ASSESSMENT PROPOSAL

---

## BACKGROUND OF REGULATION

Following the events of September 11, 2001; the Environmental Protection Agency (EPA) requires all public water systems serving a population greater than 3,300 to perform a Vulnerability Assessment (VA) and subsequently formulate an Emergency Response Plan (ERP). In our case a Vulnerability Assessment must be completed and submitted to EPA by years end. We must complete and submit an Emergency Response Plan within the six month following the submission of the Vulnerability Assessment.

Large water systems, those serving populations over 100,000, were provided Federal funds to complete the initial round of Vulnerability Assessments by the end of last year. Initially medium size systems, such as Muskegon, were to receive funding but the bill went unsigned by the President, and died. This occurred in the fall of last year – after the 2003 budget was established.

## INITIAL APPROACH

Due to the lack of Federal funding we explored the possibility of performing the Vulnerability Assessment "in-house". Bruce Straley attended a RAM-W, Sandia Laboratories Methodology, training course. This course is EPA and American Water Works Association approved. Additionally, other methodologies such as the VSAT™ "water" program, produced by the American Metropolitan Sewer Agencies (AMSA) were explored. Final evaluation of the process, regardless of method, revealed that meeting the Vulnerability Assessments and Emergency Response Plan requirements required too much staff time to complete.

## PROPOSAL

It was determined to solicit a proposal from our consultant, Tetra Tech MPS, due to their familiarity with our plant and water distribution system. Further, they could incorporate the planned plant changes into both the Vulnerability Assessment and Emergency Response Plan documents by virtue of their knowledge of the design and intended operation.

Following a review of the initial cost proposal of $50,900.00 for the Vulnerability Study alone, it was decided to request an amended proposal for a bare-bones Vulnerability Assessment only. The amended proposal reduces the involvement and effort by out-of-state engineering staff and includes only one workshop on the report findings. It does, however, include an optional additional cost for a security consultant review – should we determine the need. The final document will meet the requirements set forth by EPA and provide the guidance to address security vulnerabilities.

This approach allows us to focus more effort and funds on the Emergency Response Plan – the "nuts & bolts" of what is done in the event of an emergency. More importantly, this allows us to properly plan and budget for the Emergency Response Plan to be completed early in 2004.

Included is a copy of the amended proposal for your review.

**RECOMMENDATION**
It is my recommendation that we accept the proposal from Tetra Tech MPS for a cost of $28,000.00. I suggest we evaluate the need for the optional security review during the latter stage of the project to determine if it is a warranted addition.

**Commission Meeting Date: June 24, 2003**

2003-52 f)

**Date:** June 17, 2003

**To:** Honorable Mayor and City Commissioners

**From:** Planning & Economic Development

**RE:** Rezoning request for properties located within 'Area 11'

---

SUMMARY OF REQUEST:

Request to rezone most of the 1148 properties located within 'Area 11' (bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.).

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the request.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 6/12 meeting, with three changes in the proposed zoning. They recommended that 410 E. Apple Ave. be rezoned to B-2 instead of RT, that 1192 Wood St. be rezoned to B-1 instead of RT, and that 1076 Ambrosia, 1080 Ambrosia, 320 Iona, 316 Iona and 310 Iona all be rezoned to R-1 instead of RT. The vote was unanimous with J. Aslakson, B. Mazade, B. Smith and T. Harryman absent.

2003-52 (f)

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2109

**An ordinance to amend the zoning map of the City to provide for zoning changes for certain properties within the area bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning of the following described properties as follows (see attached map):

All properties located within the Revised Plat of 1903 of the City of Muskegon:

- Block 40, redraw zoning boundary to be in line with parcel boundaries
- South 90 feet of the north 251 feet of Lot 11, Block 40 from OSC, Open Space Conservation to R-1, Single-Family Residential
- Blocks 41, 42, 43, 44, 45, 46, 47, and 48 from RT, Two-Family Residential to R-1, Single-Family Residential
- Blocks 54, 55 from RT, Two-Family Residential to R-1, Single-Family Residential
- Block 56 from RT, Two-Family Residential and B-4, General Business to B-2, Convenience & Comparison Business, RM-1, Low Density Multiple Family Residential and R-1, Single-Family Residential
- Block 57 from RT, Two-Family Residential to R-1, Single-Family Residential
- Block 66 from RT, Two-Family Residential to RT, Two-Family Residential and R-1, Single-Family Residential
- Block 67 from B-4, General Business and RT, Two-Family Residential to B-2, Convenience & Comparison Business, RT, Two-Family Residential and R-1, Single-Family Residential
- Blocks 68, 69, 77, and 78 from RT, Two-Family Residential to R-1, Single-Family Residential
- Block 79 from RT, Two-Family Residential to RT, Two-Family Residential, B-1, Limited Business and R-1, Single-Family Residential
- Blocks 80, 93, and 94 from RT, Two-Family Residential to R-1, Single-Family Residential
- Block 95 from I-1, Light Industrial to I-1, Light Industrial and OSR, Open Space Recreation
- Block 196 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential
- Blocks 198, 199, 200, 201, 202, 203, 204, 205, 206, 0 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential
- Block 207 from RM-3, High Density Multiple-Family Residential to RM-3, High Density Multiple-Family Residential and RM-1, Low Density Multiple-Family Residential
- Blocks 208, 209, 210, 211 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential

- Block 215 from RM-1, Low Density Multiple-Family Residential and B-2, Convenience & Comparison Business to R-1, Single-Family Residential and B-2, Convenience & Comparison Business
- Blocks 224 and 232 from B-5, Central Governmental Service to B-5, Central Governmental Service and OSR, Open Space Recreation
- Block 234 from B-4, General Business and RM-1, Low Density Multiple-Family Residential to B-2, Convenience & Comparison Business and R-1, Single-Family Residential
- Block 235 from B-4, General Business and RM-1, Low Density Multiple-Family Residential to B-4, General Business and R-1, Single-Family Residential
- Block 236 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential and OSR, Open Space Recreation
- Blocks 237 and 245 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential
- Block 246 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential and OSR, Open Space Recreation
- Blocks 247 and 248 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential
- Block 249 from RM-1, low Density Multiple-Family Residential to RT, Two-Family Residential and B-1, Limited Business
- Block 250 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential and OSR, Open Space Recreation
- Blocks 251 and 260 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential
- Block 261 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential and OSR, Open Space Recreation
- Block 262 from RM-1, Low Density Multiple-Family Residential to RT, Two-Family Residential and B-1, Limited Business
- Block 263 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential and OSR, Open Space Recreation
- Blocks 264, 268, and 269 from RM-1, Low Density Multiple-Family Residential to R-1, Single-Family Residential

All properties located within the Subdivision of Block 95

- Lots 1-7 from R-1, Single-Family Residential to RM-1, Low Density Multiple-Family Residential
- Lots 17-48 from RT, Two-Family Residential to R-1, Single-Family Residential
- Lots 49-51 from I-1, Light Industrial to B-1, Limited Business
- Lots 52-54 from I-1, Light Industrial to R-1, Single-Family Residential
- Lots 55 and 56 from I-1, Light Industrial to B-1, Limited Business
- Lots 59-69 from I-1, Light Industrial to B-1, Limited Business

This ordinance adopted:

Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington

Nayes: None

Adoption Date: June 24, 2003

Effective Date: July 10, 2003

First Reading: June 24, 2003

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, MMC, City Clerk

CERTIFICATE (City Commission Date: June 24, 2003, Rezoning of Area 11)

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 24th day of June 24, 2003, 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 24, 2003.

Gail A. Kundinger

Gail A. Kundinger, MMC
Clerk, City of Muskegon

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

**Staff Report [EXCERPT]**
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING
June 12, 2003

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**Hearing; Case 2003-23: Staff-initiated request to rezone multiple properties in the portion of the city known as Area 11, bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.**

## BACKGROUND

This case is a continuation of the 'blight fight' effort begun by the City Commission last year. So far the entire area bounded by Peck St., Southern Ave., Seaway Dr. and Apple Ave. has been studied and parts of it rezoned, as 'Area 10' and 'Area 10b'.

The current target area for the blight fight effort is labeled 'Area 11', and encompasses the area bounded by Walton St., Ryerson Creek, Kenneth St., Irwin Ave., and Pine St. This area contains 1,148 parcels. Staff has conducted a land use survey and sent out letters to property owners asking them to verify that the land use we have on record for their property is correct. A land use map of Area 11 is included in this packet.

Based on the land use survey and Master Plan recommendations for this area, staff is proposing to rezone many of the parcels in Area 11. A mailing has been sent to every property owner and tenant of record, both within Area 11 and within 300 feet of the boundaries of Area 11, informing them that this rezoning is being proposed and discussed by the Planning and City Commissions. Approximately 2,000 letters were sent out in this rezoning effort.

The current zoning of many of the residential properties within Area 11 (see enclosed map labeled 'Current Zoning') is either RT, Two-Family Residential or RM-1, Low Density Multiple-Family Residential. There is also an area on the east side of Area 11 which is currently zoned R-1, Single-Family Residential. The land use survey showed that although there are many existing multi-family dwellings within the area, the majority of residential properties do contain single-family homes. Therefore, staff is proposing to rezone most of the RT and RM-1 zoned residential properties to R-1, Single-Family Residential. Any existing multi-family units would be permitted to remain as legal nonconforming uses, but no further single-family homes would be able to be converted to multi-family units. Existing multi-family developments such as Cogic Village and Bayview Towers would remain as currently zoned (RM-1 and RM-3, respectively). Some RT and RM-1 zoning would remain, but would be focused along Apple Ave. and Wood St. where many multi-family uses are concentrated and where they would act as a buffer between commercial areas and the primarily single-family area more interior to the neighborhood.

The western edge of Area 11 is currently zoned B-5, Governmental Services. Staff is not proposing any changes to this zoning. Along Apple Ave. are many existing commercial buildings, most of which are currently zoned either B-2, Convenience & Comparison Business or B-4, General Business. Staff is proposing to downzone most of the B-4 properties to B-2, leaving only the Goodwill property zoned as B-4. Staff is also proposing to downzone some of the B-2 properties to B-1. This approach is intended to keep Apple Ave. from becoming more heavily commercialized while still allowing the types of commercial uses which are more compatible with the surrounding residential area. As Goodwill is located closer to the downtown and the existing B-5 area, staff does not see any need to make this use nonconforming by downzoning it.

There is a small pocket of industrial zoning along the southern edge of Area 11. This area is currently zoned I-1, Light Industrial because there have historically been several existing industrial uses there. Staff is proposing to leave most of this area as currently zoned, while changing some properties more adjacent to the neighborhood to B-1.

A map of the proposed zoning for Area 11 is included in this packet.

## DELIBERATION

Criteria-based questions typically asked during a rezoning include:

1. **What**, if any, identifiable **conditions** related to the petition **have changed which justify** the petitioned **change in zoning**.

2. **What** are the **precedents and the possible effects** of precedent which **might result from the approval or denial** of the petition.

3. What is the **impact** of the amendment on the ability of the city to provide **adequate public services** and **facilities and/or programs** that might reasonably be required in the future if the petition is approved.

4. Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property.

5. Does the petitioned zoning change generally **comply with the adopted Future Land Use Plan of the City**.

6. Are there any **significant negative environmental impacts** which would reasonably occur if the petitioned zoning change and resulting allowed structures were built such as:

   a. **Surface water** drainage problems
   b. **Waste water** disposal problems
   c. Adverse effect on surface or subsurface **water quality**
   d. The **loss of valuable natural resources** such as **forest, wetland, historic sites, or wildlife areas.**

7. Is the proposed zoning change a "**Spot Zone**"?

    a. Is the parcel **small in size relative to its surroundings?**
    a. Would the zoning change allow uses that are **inconsistent with those allowed in the vicinity?**
    b. Would the zoning change confer a **benefit to the property owner** that is **not generally available to other properties** in the area?
    c. A spot zone is **appropriate if it complies with the Master Plan.**

**CITY OF MUSKEGON**

NOTICE OF ADOPTION

Please take notice that on June 24, 2003, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to change the zoning of the following described properties as follows:

All properties located within the Revised Plat of 1903 of the City of Muskegon and in the Subdivision of Block 95, in the area bounded generally by Pine St., Walton Ave., Ryerson Creek, Kenneth St., and Irwin Ave.:

Properties located within the Revised Plat of 1903 of the City of Muskegon:

- Block 40 redraw zoning boundary to be in line with parcel boundary
- South 90 feet of the north 251 feet of Lot 11, Block 40 from OSC, Open Space Conservation to R-1, Single-Family Residential
- Blocks 41, 42, 43, 44, 45, 46, 47, and 48 from RT, Two-Family Residential to R-1, Single-Family Residential
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- Blocks 68, 69, 77, and 78 from RT, Two-Family Residential to R-1, Single-Family Residential
- Block 79 from RT, Two-Family Residential to RT, Two-Family Residential, B-1, Limited Business and R-1, Single-Family Residential
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- Block 95 from I-1, Light Industrial to I-1, Light Industrial and OSR, Open Space Recreation
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Properties located within the Subdivision of Block 95

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- Lots 55 and 56 from I-1, Light Industrial to B-1, Limited Business
- Lots 59-69 from I-1, Light Industrial to B-1, Limited Business

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 June 30, 2003

CITY OF MUSKEGON

By ________________________________
Gail A. Kundinger, MMC
City Clerk

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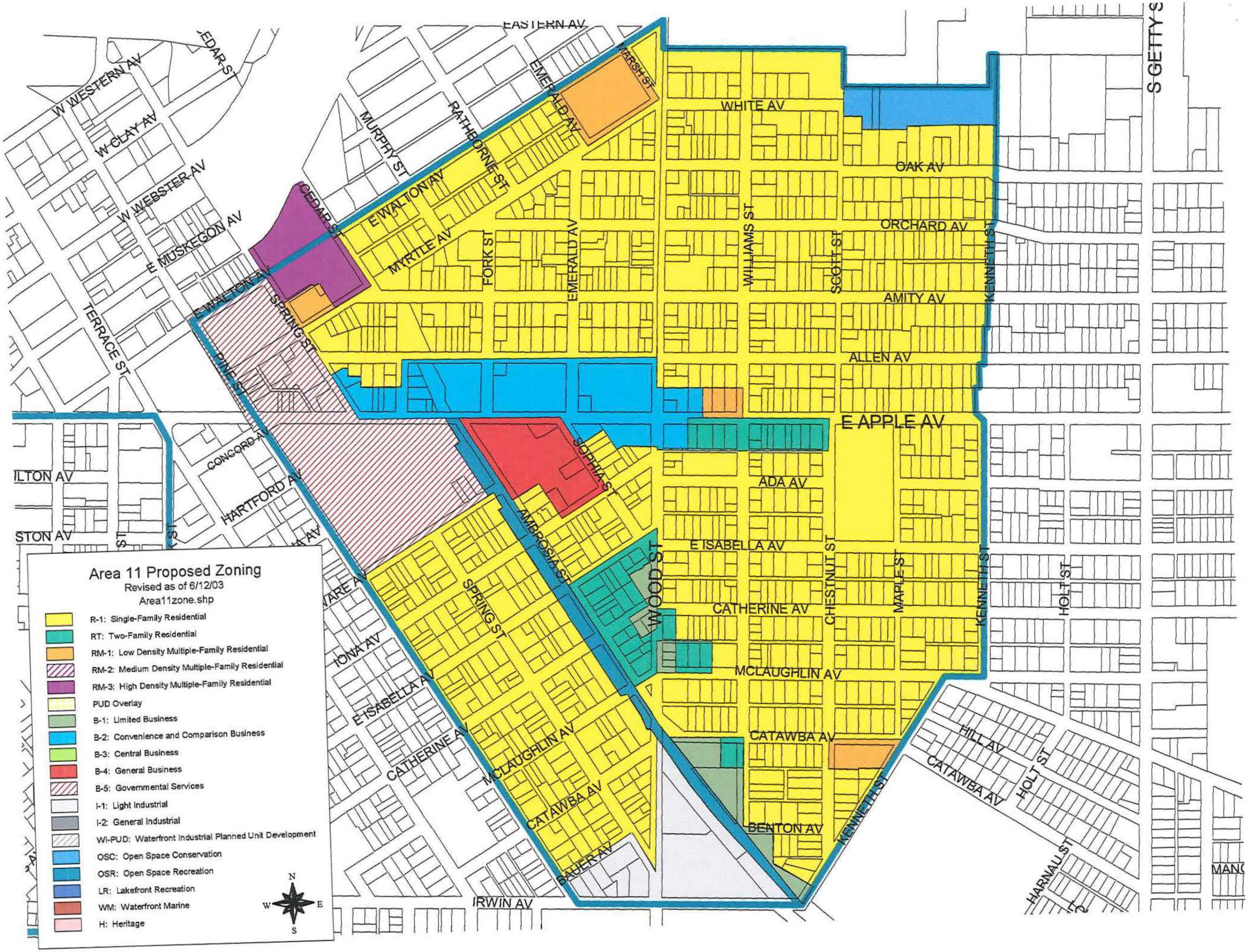
PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354


Area 11 Proposed Zoning
Revised as of 6/12/03
Area11zone.shp
R-1: Single-Family Residential
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
PUD Overlay
B-1: Limited Business
B-2: Convenience and Comparison Business
B-3: Central Business
B-4: General Business
B-5: Governmental Services
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
N
S
E
W
EASTERN AV
W WESTERN AV
W CLAY AV
W WEBSTER AV
E MUSKEGON AV
E WALTON AV
CEDAR ST
MURPHY ST
RATHBORNE ST
EMERALD AV
MARSH ST
WHITE AV
OAK AV
ORCHARD AV
AMITY AV
ALLEN AV
E APPLE AV
ADA AV
E ISABELLA AV
CATHERINE AV
MCLAUGHLIN AV
CATAWBA AV
BENTON AV
BAUER AV
IRWIN AV
MYRTLE AV
FORK ST
WILLIAMS ST
SCOTT ST
KENNETH ST
S GETTY S
SPRING ST
TERRACE ST
PINE ST
CONCORD AV
HARTFORD AV
SOPHIA ST
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WOOD ST
CHESTNUT ST
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**AGENDA ITEM NO.** 2003-52 g)

**CITY COMMISSION MEETING** ___6/24/03_

**TO**: Honorable Mayor and City Commissioners

**FROM**: Bryon L. Mazade, City Manager

**DATE**: June 17, 2003

**RE**: Industrial Facilities Tax Payment Agreement - Burgess-Norton

**SUMMARY OF REQUEST**:

To approve an IFT payment agreement with Burgess-Norton to pay Industrial Facilities taxes as a result of the closing of their facility in the City.

**FINANCIAL IMPACT**:

$217,390 to be distributed to the taxing jurisdictions.

**BUDGET ACTION REQUIRED**:

None.

**STAFF RECOMMENDATION**:

To approve the attached agreement.

**COMMITTEE RECOMMENDATION**:

None.

O:COMMON\DEPTMENT\ADMIN\AGNDAFRM
JMS - O: (BURGESS-NORTON-IFT TAX PYMT)

**DRAFT**
**06/10/03**

# CONTRACT FOR PAYMENT OF JEOPARDY ASSESSMENT AND INDUSTRIAL FACILITIES TAX

This Agreement is effective on _______2003, between the **City of Muskegon,** of 933 Terrace Street, Muskegon, Michigan, 49443-0536 ("City") and **Burgess Norton Mfg. Co., a Division of Amsted Industries, Inc.**, of 737 Peyton St., Geneva, IL, 60134-2189 ("Burgess Norton").

## Background

A. Burgess Norton applied for and received an Industrial Facilities tax exemption beginning December 30, 1996.

B. The City and Burgess Norton entered into an Industrial Facilities Tax Exemption (IFT) contract on November 18, 1996.

C. During 2003, Burgess Norton removed substantially all of its production facilities and jobs, without transferring either to another facility in the City.

D. In April 2003, imposed a jeopardy assessment on the personal property

E. In April of 2003, Burgess Norton held an auction selling real property located at the Burgess Norton facility in Muskegon, Michigan. The auction proceeds, approximately $450,000, is being held by the auctioneer.

## Agreement

Incorporating the above provisions, the parties agree as follows:

1. **Burgess Norton Obligations**. Burgess Norton agrees to do the following:

1.1 **IFT Exemption Repayment**. Burgess Norton will pay to the City $112,390, plus interest at the rate of 6% on the outstanding balance from the date of execution of this agreement, in five annual installments. The first installment is due upon execution of this agreement. All future installments will be due on July 1. If a payment is missed, the entire remaining balance agreed pursuant to paragraph 1.1 will accelerate to the date in which payment is missed. Burgess Norton agrees to pay all attorney fees incurred by City, including future attorney fees that may result from a missed payment, or other breach, of this contract.

1.2 **Jeopardy Assessment.** Burgess Norton agrees to escrow, in an interest bearing account, $105,000 with Huntington National Bank to pay all 2003 real and personal property taxes attributable to the Burgess Norton facilities in Muskegon, Michigan. The monies held in escrow shall be used to satisfy 2003 real and personal property taxes with such payment being made prior to February 14, 2004. To the extent that the 2003 taxes owed are less than the amount in the escrow account, the balance in the escrow account, both principal and interest, shall be returned to Burgess Norton. To the extent that the 2003 taxes owed are more than the amount in the escrow account, Burgess Norton shall pay the shortfall by February 14, 2004.

2. **City Obligations**. City agrees to do the following:

2.1 **IFT Exemption Repayment.** The City will forgo any IFT Exemption repayment from Burgess Norton above the stated amount in Section 1.1.

2.2 **IFT Revocation.** The City will not take action on terminating the Burgess Norton Industrial Facilities Tax Exemption Certificate prior to December 1, 2003.

2.3 **Jeopardy Assessment.** Upon or contemporaneous with the escrowing of funds pursuant to paragraph 1.2, City shall release its jeopardy assessment.

3. **Miscellaneous**.

3.1. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.

3.2. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter. This Agreement supersedes and/or replaces any oral or written Agreement(s) relating to the subject matter entered into by the parties before the date of this Agreement.

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

3.4 **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by all parties.

The parties have executed this Agreement as of ____________, 2003, with the consent and approval of their governing bodies. It is effective on the effective date set forth above.

**City of Muskegon**

By_________________________________
Stephen J. Warmington, Mayor

and_______________________________
Gail A. Kundinger, MMC, Clerk

**Burgess Norton Mfg. Co.**
**Division of Amsted Industries, Inc.**

By_________________________________

Its _________________________________

and _________________________________

Its _________________________________

**DRAFT**
**06/10/03**

# ESCROW AGREEMENT

This Escrow Agreement is made on _________, 2003, by and between the **City of Muskegon,** of 933 Terrace Street, Muskegon, Michigan, 49443-0536 ("City"), **Burgess Norton Mfg. Co., a Division of Amsted Industries, Inc.**, of 737 Peyton St., Geneva, IL, 60134-2189 ("Burgess Norton") and **Huntington Bank**, a ___________ corporation ("Escrow Agent"), with reference to the following facts:

## Background

A. Burgess Norton and the City have agreed to use One Hundred Five Thousand Dollars ($105,000) of the proceeds from the auction of Burgess Norton property to be used to pay the 2003 property tax assessment for Burgess Norton. Remaining proceeds of the property auction will be returned to Burgess Norton.

B. Burgess Norton and the City desire to enter into this Agreement in order to establish an escrow account with Escrow Agent which shall be used to pay for Burgess Norton's 2003 property tax assessment.

**Therefore, parties agree as follows:**

1. **Escrow Deposit.** On the date of this Escrow Agreement, Burgess Norton, for the benefit of the City, has deposited the sum of One Hundred Five Thousand Dollars ($105,000) into an interest bearing escrow account established with Escrow Agent (the "Deposit").

1.1 Buyer and Seller acknowledge and agree that the Deposit shall by held and dispersed by the Escrow Agent in accordance with the terms and conditions set forth in this Agreement. Escrow Agent acknowledges receipt of the Deposit.

2. **Payment to City.** Escrow Agent shall hold the Deposit in escrow and pay the Deposit to the City by February 14, 2004, upon assessment of Burgess Norton's 2003 property tax obligation. Burgess Norton and the City shall jointly authorize payment of the monies to the City in writing upon said transfer.

2.1 In event the 2003 property tax assessment is for less than the balance in the account, the remaining balance of the Deposit will be returned to Burgess Norton.

2.2 In event the 2003 property tax assessment is for more than the balance in the account, Burgess Norton agrees to pay, by February 14, 2003, the remaining property tax balance due.

3. **Termination.** This Escrow Agreement shall terminate with the delivery of the Deposit as directed above.

4. **Interest.** Any interest that is earned on the deposit shall be disbursed pursuant to paragraphs 2.1 or 2.2.

5. **Status of Escrow Agent.** Escrow Agent, in the performance of its duties under this Agreement, shall be deemed an independent party not acting as the agent of the City, Burgess Norton, or other interested party. So long as Escrow Agent relies upon any payment authorization signed by both Burgess Norton and the City, Escrow Agent shall have no liability whatever to the parties for any error in such authorization, or for any act or omission by Escrow Agent in reliance thereon. Escrow Agent shall be relieved of all liability upon release, in accordance with this Agreement, of all amounts deposited with it pursuant to the this Agreement.

6. **Miscellaneous.**

a. **Amendment.** This Agreement shall not be changed except by a writing executed by each party.

b. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage paid, to the appropriate party at the party's address set forth in this Agreement or to such other address that shall be designated in writing.

c. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.

d. **Headings.** The paragraph headings used in this Agreement are included solely for convenience.

e. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties. This Agreement supersedes and/or replaces any oral or written Agreement(s) relating to the subject matter entered into by the parties before the date of this Agreement.

f. **Binding Effect.** This Agreement, inclusive of its terms and provisions, shall survive Closing and shall be binding on, inure to the benefit of, and be enforceable by, the parties' heirs, legal representatives, successors, and assigns.

This Agreement was executed on the date set forth above.

**City of Muskegon**

By________________________________
Stephen J. Warmington, Mayor

and________________________________
Gail A. Kundinger, MMC, Clerk

**Burgess Norton Mfg. Co.**
**Division of Amsted Industries, Inc.**

By:____________________________
Name:__________________________
Its:____________________________

By:____________________________
Name:__________________________
Its:____________________________

**Escrow Agent** – Huntington National Bank

By:____________________________
Name:__________________________
Its:____________________________

2003-52 (g)

# CONTRACT FOR PAYMENT OF JEOPARDY ASSESSMENT AND INDUSTRIAL FACILITIES TAX

This Agreement is effective on 6/24/2003, between the **City of Muskegon,** of 933 Terrace Street, Muskegon, Michigan, 49443-0536 ("City") and **Burgess Norton Mfg. Co., a Division of Amsted Industries, Inc.**, of 737 Peyton St., Geneva, IL, 60134-2189 ("Burgess Norton").

## Background

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B. The City and Burgess Norton entered into an Industrial Facilities Tax Exemption (IFT) contract on November 18, 1996.

C. During 2003, Burgess Norton removed substantially all of its production facilities and jobs, without transferring either to another facility in the City.

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## Agreement

Incorporating the above provisions, the parties agree as follows:

1. **Burgess Norton Obligations**. Burgess Norton agrees to do the following:

   1.1 **IFT Exemption Repayment**. Burgess Norton will pay to the City $112,390, plus interest at the rate of 6% on the outstanding balance from the date of execution of this agreement, in five annual installments. The first installment is due upon execution of this agreement. All future installments will be due on July 1. If a payment is missed, the entire remaining balance agreed pursuant to paragraph 1.1 will accelerate to the date in which payment is missed. Burgess Norton agrees to pay all attorney fees incurred by City, including future attorney fees that may result from a missed payment, or other breach, of this contract.

   1.2 **Jeopardy Assessment.** Burgess Norton agrees to escrow, in an interest bearing account, $105,000 with Huntington National Bank to pay all 2003 real and personal property taxes attributable to the Burgess Norton facilities in Muskegon, Michigan. The monies held in escrow shall be used to satisfy 2003 real and personal property taxes with such payment being made prior to February 14, 2004. To the extent that the 2003 taxes owed are less than the amount in the escrow account, the balance in the escrow account, both principal and interest, shall be returned to Burgess Norton. To the extent that the 2003 taxes owed are more than the amount in the escrow account, Burgess Norton shall pay the shortfall by February 14, 2004.

2. **City Obligations**. City agrees to do the following:

2.1 **IFT Exemption Repayment**. The City will forgo any IFT Exemption repayment from Burgess Norton above the stated amount in Section 1.1.

2.2 **IFT Revocation.** The City will not take action on terminating the Burgess Norton Industrial Facilities Tax Exemption Certificate prior to December 1, 2003.

2.3 **Jeopardy Assessment.** Upon or contemporaneous with the escrowing of funds pursuant to paragraph 1.2, City shall release its jeopardy assessment.

3. **Miscellaneous**.

3.1. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.

3.2. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter. This Agreement supersedes and/or replaces any oral or written Agreement(s) relating to the subject matter entered into by the parties before the date of this Agreement.

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

3.4 **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by all parties.

The parties have executed this Agreement as of June 24, 2003, with the consent and approval of their governing bodies. It is effective on the effective date set forth above.

**City of Muskegon**

By ______________________
Stephen J. Warmington, Mayor

and Gail A. Kundinger
Gail A. Kundinger, MMC, Clerk

**Burgess Norton Mfg. Co.**
**Division of Amsted Industries, Inc.**

By ______________________
J F Carroll

Its President

and ______________________
M J Carter

Its Controller

333 North Cedar St. • Lansing, MI 48912
Phone: 517.267.1502 • Fax: 517.267.8955
megproduction@aol.com

**Meridian Entertainment Group**

# Fax

2003-52 h)

| | | | |
|---|---|---|---|
| **To:** | Bryon Mazade | **From:** | Kevin Meyer |
| **Fax:** | (231) 722-1214 | **Pages:** | 1 of 6 |
| **Phone:** | (231) 724-6724 | **Date:** | 6-24-03 |
| **Re:** | Permit for 6/26/03, Pyro, LL Cool J | **CC:** | file |

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

**Brian, attached is the application, cert. Of insurance, and stage plot as faxed on 6/20. Let me know if this is still possible. My office is 517-267-1502, my cell is 517-410-5914.**

**Thanks,**
**Kevin Meyer**

RECEIVED
JUN 24 2003
MUSKEGON
CITY MANAGER'S OFFICE

Kevin Meyer

2003-52 (h)

# 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: (X) PUBLIC DISPLAY ( ) AGRICULTURAL PEST CONTROL

ISSUED TO:

NAME Tom Brewer

ADDRESS 1708 Guill Rd.

AGE 39

REPRESENTING

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

SACHA MONAST

ADDRESS

7676 Woodbine Ave., #8, Markham, ON

NUMBER & TYPES OF FIREWORKS: See Attached

DISPLAY:

EXACT LOCATION

Heritage Landing, Summer Celebration

CITY, VILLAGE, TOWNSHIP

DATE June 26, 2003

TIME 9:00PM

BOND OR INSURANCE FILED: (X) YES ( ) NO AMOUNT 5,000,000.00

ISSUED BY:

Issued by action of the MUSKEGON CITY COMMISSION (council, commission, board)

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

on the 24th day of June 2003

Stephen Warmington, Mayor

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

FM-32(12-88)

# APPLICATION
FOR FIREWORKS DISPLAY PERMIT
Act 358, P.A. 1968

DATE OF APPLICATION

1. TYPE OF DISPLAY. ☐ Public Display ☐ Agricultural Pest Control

2. APPLICANT

| NAME OF PERSON | ADDRESS | AGE: must be 21 or over |
|---|---|---|
| SACHA MONASTY | 7676 Woodbine Ave, #8 | 23 |
| IF A CORPORATION: Name of President | ADDRESS | |
| DOUG ADAMS | " " " , MARKHAM, ON | |

3. PYROTECHNIC OPERATOR

| NAME | ADDRESS | AGE: Must be 21 or over |
|---|---|---|
| Tom Brewer | 1208 Quill Rd | 39 |

EXPERIENCE: over 10

| NUMBER OF YEARS | NUMBER OF DISPLAYS | WHERE |
|---|---|---|
| over 10 | over 500 | North America, Europe, Australia etc. |

NAMES OF ASSISTANTS:

| NAME | ADDRESS | AGE |
|---|---|---|
| Bill GarGarezca | 722 Queen St. West | 39 |
| 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

587 West Western Muskegon, MI 49440

DATE: July 26th, 2003 TIME

6. NUMBER AND KINDS OF FIREWORKS TO BE DISPLAYED

Please See Effects List..

MANNER & PLACE OF STORAGE PRIOR TO DISPLAY

Lockable, Portable Magazine

(Subject to Approval of Local Fire Authorities)

7. FINANCIAL RESPONSIBILITY

A. AMOUNT OF BOND OR INSURANCE (to be set by municipality): $5,000,000 General liability

B. BONDING CORPORATION OR INSURANCE COMPANY: NAME: ADMIRAL insurance

ADDRESS: 2500 Center Point Rd, BIRMINGHAM, AL

(See other side for instructions)

PYROTEK
SPECIAL EFFECTS INC.

# LL COOL J

## EFFECTS LIST

25 20 x 20 Silver Gerb Waterfall
- Includes one demo

7 Preloaded Flash w/1 x 20 Silver Gerb each
– Includes One Demo

13 Fireballs - Includes one demo

2 Propane Torches

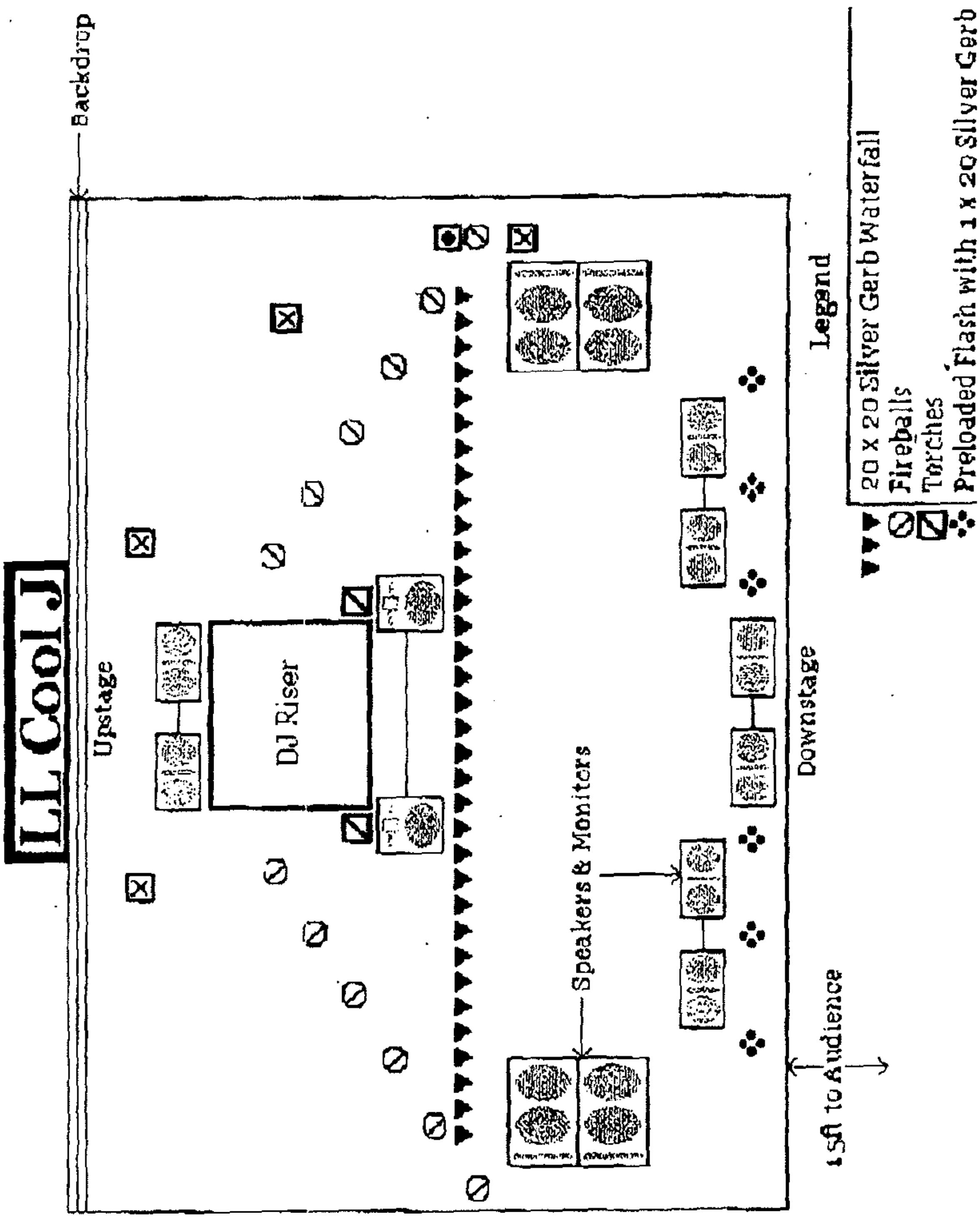
## EFFECTS DESCRIPTION

**Gerb** - Tube device that emits a spray of silver sparks, duration depends on device; i.e. 8x10= 8 seconds by 10ft, ½ x20= ½ second by 20ft.

**Gerb Waterfall** - Tube devices are placed in Close Proximity to create the illusion of a waterfall.

**Pre-Loaded Flash** - Pre-measured manufactured flash powder in flash pot. Emits a bright flash approximately 1/2 second duration, 3 ft in height.

**Dragons / Torches** – A propane fed device with a controllable column of flame and/or fireball, height adjustable between 5 and 40ft for the Dragons and 6 inches to 2 feet for the Torches.


LL Cool J
Backdrop
Upstage
DJ Riser
Speakers & Moniters
Downstage
15ft to Audience
Legend
20 x 20 Silver Gerb Waterfall
Fireballs
Torches
Preloaded Flash with 1 x 20 Silver Gerb

OPd for permit only.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) 6/26/03

PRODUCER

DRAYTON INSURANCE BROKERS, INC.
P.O. BOX 94067
BIRMINGHAM, ALABAMA 35220
(205) 854-5806

THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Pyrotek Special Effects, Inc.
570 Alden Road, Unit 3
Markham, Ontario L3R 8N5

INSURERS AFFORDING COVERAGE

INSURER A: ADMIRAL INSURANCE COMPANY
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

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

| INSR LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE | POLICY EXPIRATION DATE | LIMITS | |
|---|---|---|---|---|---|---|
| A | GENERAL LIABILITY<br>X COMMERCIAL GENERAL LIABILITY<br>X OCCURRENCE ___ CLAIMS MADE<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>___ POLICY ___ PROJECT ___ LOC | A03CB16897 | 3/1/03 | 3/1/04 | EACH OCCURRENCE | $ 5,000,000 |
| | | | | | FIRE DAMAGE (Any one fire) | $ 50,000 |
| | | | | | MED EXP (Any one person) | $ NONE |
| | | | | | PERSONAL & ADV INJURY | $ 5,000,000 |
| | | | | | GENERAL AGGREGATE | $ NO AGG |
| | | | | | PRODUCTS-COMP/OP AGG | $ 5,000,000 |
| | AUTOMOBILE LIABILITY<br>___ ANY AUTO<br>___ ALL OWNED AUTOS<br>___ SCHEDULED AUTOS<br>___ HIRED AUTOS<br>___ NON-OWNED AUTOS | NOT COVERED | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | | | | | BODILY INJURY (Per person) | $ |
| | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | GARAGE LIABILITY | NOT COVERED | | | | |
| | EXCESS LIABILITY<br>___ OCCUR ___ CLAIMS MADE<br>___ DEDUCTIBLE<br>___ RETENTION $ | NOT COVERED | | | EACH OCCURRENCE | $ |
| | | | | | AGGREGATE | $ |
| | | | | | | $ |
| | | | | | | $ |
| | | | | | | $ |
| | WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY | NOT COVERED | | | | |
| | OTHER | | | | | |

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

City of Muskegon and all elected and appointed, all volunteers, all Board of Commissioners as authorized and their board, employees and volunteers, the County of Muskegon, the Muskegon Summer Celebration, their employees and volunteers, and MMCS, Inc. d/b/a Meridian Entertainment Group, its officers and employees are included as Additional Insureds in respect to liability caused by the Named Insureds operations, except that coverage does not apply to liability caused by the Additional Insureds negligent acts or omissions.

CERTIFICATE HOLDER

City of Muskegon
933 Terrace
Muskegon, MI 49440

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL 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

A.J. Stringer

IBEX
INSURANCE AGENCY

FACSIMILE TRANSMITTAL SHEET

| | |
|---|---|
| TO: Irene | FROM: Tim McClorey |
| COMPANY: City of Muskegon | DATE: 6-26-03 |
| Phone ~~FAX~~ NUMBER: (231) 724-6705 | TOTAL NO. OF PAGES INCLUDING COVER: 2 |
| Fax ~~PHONE~~ NUMBER: (231) 724-4178 | SENDER'S PHONE NUMBER: 248-538-0470 |
| RE: L.L. Cool J. | SENDER'S FAX NUMBER: 248-538-0471 |

☒ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PER YOUR REQUEST

NOTES/COMMENTS:

Per our conversation.

30600 Northwestern Hwy., Suite 250
P.O. Box 3355 Farmington Hills, MI 48333-3355
877-888-IBEX (4239) 248-538-0470 Fax 248-538-0471 www.ibexagency.com

# DRAYTON INSURANCE BROKERS, INC.

2500 CENTER POINT ROAD, SUITE 301
BIRMINGHAM, ALABAMA 35215
TELEPHONE: (205) 854-5806

POST OFFICE BOX 94067
BIRMINGHAM, ALABAMA 35220
FAX: (205) 854-5899

CERTIFICATE OF INSURANCE NO. 372350

We certify that insurance as outlined below is afforded the Named Insured under policy A03CB16897 issued by Admiral Insurance Company.

| | | |
|---|---|---|
| NAMED INSURED | Pyrotek Special Effects, Inc.<br>570 Alden Road, Unit 3<br>Markham, Ontario L3R 8N5<br>Canada | Pyrotek Special Effects (Memphis), Inc.<br>5505 West Hacienda Avenue<br>Suite 1055<br>Las Vegas, Nevada 89118 |
| PERIOD | March 1, 2003 to February 29, 2004; Both days inclusive. | |
| COVERAGE | Fireworks Display Contractors Liability. Covering the legal liability of the Named Insured for Bodily Injury and/or Property Damage caused by or arising from the preparation for, the firing of, or the clearance following fireworks display(s), FIRED BY THE NAMED INSURED OR THE NAMED INSURED'S EMPLOYEES. | |
| LIMIT OF LIABILITY | $5,000,000 each occurrence.<br>The addition of more than one insured does not serve to increase the above stated limit of liability. | |
| RESTRICTION | THIS POLICY APPLIES ONLY TO DISPLAYS WHICH COMPRISE SOLELY CLASS "C" FIREWORKS (EXPLOSIVES CLASSIFICATION 1.4), PYROTECHNICS SPECIAL EFFECTS (including indoor pyrotechnics), & PROPANE & OPEN FLAME EFFECTS. EXCLUDING THE USE OF CLASS "B" FIREWORKS (EXPLOSIVES CLASSIFICATION 1.3). | |

It is certified that the following SPONSORS AND/OR PROPERTYOWNERS AND/OR LICENSING AUTHORITIES are included as Additional Insured(s), but only in respect of the legal liability of such Additional Insured(s) for Bodily Injury or Property Damage sustained during the Period stated above and caused directly by the operations of the Named Insured in connection with the firing of the fireworks display(s) stated below BY THE NAMED INSURED OR THE NAMED INSURED'S EMPLOYEES. The insurance afforded any Additional Insured does not include coverage for any injury or damage arising from the failure of such Additional Insured to fulfill its obligations specified in its contract with the Named Insured.

NAME & ADDRESS OF ADDITIONAL INSURED SPONSORS
PROPERTY OWNERS, LICENSORS

City of Muskegon & Muskegon Summer Celebrations

DISPLAY LOCATION
Muskegon Summer Celebration
587 West Western
Muskegon, MI 49440

DISPLAY DATE(S)
June 26th, 2003

CONTRACT PRICE $

This insurance applies automatically if the described display is fired on any alternative date because of cancellation on the date shown due to weather or other cause; however, IN NO EVENT WILL COVERAGE APPLY AFTER February 29, 2004.

This certificate is not an insurance policy and does not in any way amend, extend or alter the coverage afforded by the policy listed above. For particulars concerning the terms, exclusions and conditions of such policy each Additional Insured is referred to the policy documents in the possession of the Named Insured. Should the above described policy be cancelled before the expiration date thereof, the issuing company will mail 30 days' prior written notice to the above named Additional Insured.

DRAYTON INSURANCE BROKERS, INC.

June 10th, 2003

DATE OF ISSUE

A.J. STRINGER, PRESIDENT

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 or Keith — From: Linda

Fax: — Pages(including cover) 2

Phone: — Date: 6-24-03

Re: — CC:

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

Please check the insurance coverage for another pyrotechnics display during a concert at the Muskegon Summer Celebration.

I asked Kevin Meyer to fax you a better copy.

Thanks,

Linda

TRANSMISSION VERIFICATION REPORT

| | | |
|---|---|---|
| TIME | : | 06.20.2003 19:58 |
| NAME | : | PYROTEK SPECIAL EFFTS |
| FAX | : | 905-479-3515 |
| TEL | : | 905-479-9991 |

| | |
|---|---|
| DATE,TIME | 06/20 19:57 |
| FAX NO./NAME | 12317244178 |
| DURATION | 00:01:00 |
| PAGE(S) | 05 |
| RESULT | OK |
| MODE | STANDARD<br>EMC |

7676 Woodbine Ave. Units 7 & 8
Markham, ON L3R 2N2
800-481-9910 Main
905-479-3515 Fax

**PYROTEK SPECIAL EFFECTS**

# Fax

| | | | |
|---|---|---|---|
| To: | Linda | From: | Sacha Monast |
| Fax: | 231-724-4175 | Pages: | 5 including cover |
| Phone: | 231-724-6705 | Date: | Friday, June 20th, 2003 |
| Re: | LL Cool J | CC: | |

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

• **Comments:**

Hello Linda,

Here is the application as well as a certificate of Insurance an effects list as well as a stage plot. If you have any questions please feel free to ask.

Thanks

SMonast

Sacha Monast