CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 12, 2012

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
  - A. **Recognition of Spring 2012 Citizen's Academy Graduates.** PUBLIC SAFETY
- **INTRODUCTIONS/PRESENTATION:**
- **CONSENT AGENDA:**
  - A. **Approval of Minutes.** CITY CLERK
  - B. **Environmental Program Mowing and Trash Clean-up Contract.** PLANNING & ECONOMIC DEVELOPMENT
  - C. **City – MDOT Agreement for the Reconstruction of Sherman Blvd. from Lincoln to Estes.** ENGINEERING
  - D. **Approval of Contractor for New Construction of House at 605 Jackson.** COMMUNITY & NEIGHBORHOOD SERVICES
  - E. **Liquor License Request from Top Spin, Inc., 2536 Henry.** CITY CLERK
  - F. **Fireworks Display Permit for Muskegon Country Club.** CITY CLERK
  - G. **Polling Sites Relocation.** CITY CLERK
  - H. **Approval of Title Company for Community and Neighborhood Services.** COMMUNITY & NEIGHBORHOOD SERVICES
- **PUBLIC HEARINGS:**
  - A. **2012-13 Budget.** FINANCE
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**

- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**

  A. **Proposed Betten Development Agreement Changes/Promissory Note with BRA.** CITY MANAGER

  B. **Engineering Services Agreement for Williams Street Storm Outlet.** ENGINEERING

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

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

- **CLOSED SESSION: Attorney/Client Communication and 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 Ann Marie Becker, City Clerk, 933 Terrace Street, Muskegon, MI 49440 or by calling (231) 724-6705 or TDD: (231) 724-4172.

RESOLUTION
RECOGNITION OF SPRING 2012 CITIZEN'S ACADEMY GRADUATES

WHEREAS, the City Commission desires to provide citizens with a better understanding of the functions of law enforcement, dispelling misconceptions and increasing positive communication between citizens and police; and

WHEREAS, it is the desire of the Muskegon City Commission to encourage cooperation between the public and law enforcement to positively impact our communities;

NOW, THEREFORE, BE IT RESOLVED, that the Muskegon City Commission hereby congratulates and recognizes:

Crystal Bailard
Gregory Borgman
Kabrina Conklin
David Kaiser
Eric Kanouff
Casey Orrison
Craig, Parolari
Ian Pokosa
David Selander
Carl Stimac
Bradley Tripp
David Wilson

for their faithful attendance, completion and graduation from the 10 week Spring 2012 Citizen's Police Academy

Given on behalf of the Muskegon City Commission this 12th day of June, 2012.

____
Stephen J. Warmington, Mayor

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the May 22nd City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 22, 2012

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, May 22, 2012.

Mayor Warmington opened the meeting with a prayer from Pastor Tim Cross from the Living Word Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

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

2012-38 HONORS AND AWARDS:

A. Hackley Library Proclamation.

Mayor Warmington recognized the Hackley Library who has been named a National Literary Landmark based on its relationship with Verna Aardema Vugteveen. Martha Ferriby, Director of the Hackley Library thanked the Commission and public and invited them to the June 12th Dedication Ceremony.

B. Recognition of Smash – Karli Baldus.

Mayor Warmington presented Jon Felske, Muskegon Public Schools Superintendent and Cindy Larson, Vice President of the Board of Education with a resolution recognizing Muskegon High School's theatre group as one of thirty finalists and ultimately one of ten schools throughout the nation that will participate in a fully staged musical.

2012-39 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the May 7th Commission Worksession Meeting and the May 8th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

C. Permanent Traffic Control Order to Install Yield Signs on LeBoeuf at Miner. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to install two Yield Signs on north and south approaches of LeBoeuf at Miner.

FINANCIAL IMPACT: Cost of signs and man-power to install, if approved.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to install the Yield Signs on LeBoeuf.

D. Consideration of Bids for City Hall Tuck Pointing. ENGINEERING

SUMMARY OF REQUEST: Award a contract for the Tuck Pointing and sealing of the City Hall building to Kent Companies out of Grand Rapids since they were the lowest responsible bidder with a bid price of $37,925.

FINANCIAL IMPACT: $37,925.

BUDGET ACTION REQUIRED: None, project was budgeted for in the 2011-2012 CIP.

STAFF RECOMMENDATION: Award the contract to Kent Companies.

E. Vacation of Waalkes Street between Delano Avenue and Young Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff is requesting for the vacation of Waalkes Street between Delano Avenue and Young Avenue, with all utility easement rights to be retained.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

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

COMMITTEE RECOMMENDATION: The Planning Commission recommended vacation of the street at their May 10th meeting, with the condition that all utility easement rights be retained.

G. Transmittal of 2012-13 Proposed Budget. CITY MANAGER

SUMMARY OF REQUEST: At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2012-13 which starts July 1, 2012. Both hardcopy and electronic versions of the budget have been distributed to Commissioners. Additionally, the budget is available for public inspection on the City's website and at the City Clerk's office or Hackley Public Library.

The proposed budget will be reviewed in detail with staff at the June 11th Worksession. A public hearing on the budget will be held at the regular

Commission meeting the following evening. City ordinance requires that the budget be adopted by the Commission on or before the second Commission meeting in June.

FINANCIAL IMPACT: The budget is the City's financial plan for the coming fiscal year.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: None.

Motion by Vice Mayor Gawron, second by Commissioner German to approve the Consent Agenda as presented minus items B and F.

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

Nays: None

MOTION PASSES

2012-40 ITEMS REMOVED FROM THE CONSENT AGENDA:

B. Liquor License Request from Dolgencorp, LLC, 381 E. Laketon. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Dolgencorp, LLC, a Chain Applicant for a new SDM license for 381 E. Laketon (Dollar General Store #10842).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

Motion by Commissioner Spataro, second by Commissioner Turnquist to approve the liquor license request from Dolgencorp, LLC, 381 E. Laketon.

ROLL VOTE: Ayes: None

Nays: Warmington, Hood, Spataro, German, Gawron, Wierengo, and Turnquist

MOTION FAILS

Motion by Commissioner Spataro, second by Commissioner Wierengo to deny the request for a liquor license from Dolgencorp, LLC, at 381 E. Laketon.

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

Nays: None

MOTION TO DENY PASSES

F. Concession Contract for City of Muskegon Parks. PUBLIC WORKS

SUMMARY OF REQUEST: Staff is asking permission to enter into a one-year contractual agreement with Tom Williams of Messy Dogs at Pere Marquette, Seyferth and McGraft Parks located within the City of Muskegon to sell hot dogs and other minor snacks from a Mobil cart.

FINANCIAL IMPACT: Contract revenue will be 10% of gross receipts, per Concession Agreement.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into a concession agreement with Mr. Williams.

Motion by Commissioner Turnquist, second by Vice Mayor Gawron to approve the concession contract with Messy Dogs with the City of Muskegon for 2012 and that it be no closer than 500 feet from any existing concession.

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

Nays: None

MOTION PASSES

2012-41 UNFINISHED BUSINESS:

A. <u>CJ's on the Beach.</u> CITY CLERK

SUMMARY OF REQUEST: CJ's on the Beach, 1601 Beach Street, asked Commission to reconsider the renewal of their liquor license.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: None.

Mayor Warmington recused himself at 6:49 p.m. during this discussion and Vice Mayor Gawron continued the meeting.

Motion by Commissioner Spataro, second by Commissioner Hood to deny the request by CJ's on the Beach to reconsider the renewal of their liquor license until all fees and taxes owed to the City of Muskegon are paid per existing City policy.

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

Nays: None

Abstain: Warmington

MOTION PASSES

2012-42 NEW BUSINESS:

A. <u>Rezoning Request for Property Located at 1776 Division Street.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property located at 1776

Division Street from R1, Single Family Residential District to B-4, General Business District.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends denial of the request due to lack of compliance with the Master Land Use Plan and zoning district intent.

COMMITTEE RECOMMENDATION: The Planning Commission voted to recommend denial of the request at their May 10th meeting. The motion was approved by a 7-1 vote.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to deny the request to rezone the property located at 1776 Division Street.

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

Nays: None

MOTION PASSES

2012-43 PUBLIC PARTICIPATION:

Mr. Jon Felske, Muskegon Public Schools Superintendent requested Muskegon Big Red football team be allowed to sell on City streets.

Motion by Commissioner Turnquist, second by Commissioner Spataro to allow the Muskegon Big Red football team to have a tag day on Friday, June 30, 2012, and for it to be grandfather claused in with the Big Red Band and Goodfellows.

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

Nays: None

MOTION PASSES

Public comments were received.

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

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Commission Meeting Date: June 12, 2012

Date: June 4, 2012

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department

RE: Environmental Program Mowing and Trash Clean-up Contract

SUMMARY OF REQUEST:

The contract for mowing of lots and trash clean up of public and private properties previously held by Freelance Enterprises Inc. had expired on March 31, 2012. A request for bids was advertised and four companies placed bids. Freelance Enterprises of Muskegon Township is the low bidder for a three-year agreement.

FINANCIAL IMPACT:

None - Funds budgeted for this activity.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION:

To approve a 3 year contract with Freelance Enterprises Inc. and to authorize the Mayor and City Clerk to sign the agreements, for the mowing of lots and trash removal on properties located within the city.

COMMITTEE RECOMMENDATION: None

Planning Department

Memo

To: Honorable Mayor and City Commission

From: Hope Mitchell, Code Coordinator

Date: June 4, 2012

Re: Environmental mowing & trash contract bids

Staff requested bids for a possible two year contract with an optional contract extension typically set at two years. The bid documents also had an area for submission of a three year bid with an option to extend that, which is typically set at two years. This request for bids resulted in four submissions from area contractors to perform the services needed and are shown in the tables located later in this document.

In reviewing the bid documents staff discovered irregularities in some of the bidding documents, except for the documents submitted by Freelance Enterprises. The errors ranged from minor errors such as a name area being left blank to one set of documents submitted virtually empty.

Because of the varying prices submitted by the different bidders, staff would like to recommend that a three year contract be awarded to Freelance Enterprises with a two year extension possible.

Awarding contracts as indicated would be accepting the low bidder, Freelance Enterprises. The reasoning for the three year agreement with Freelance Enterprises is that they had submitted a lower bid for a three year contract versus a two year agreement.

Staff believes that the management of two contractors, versus one contractor, would still be the best to do.

The four bids for a two-year contract were as follows:

Bidders	Trash Crew	Tractor Crew	Mower Crew	Helping Labor (Two Persons)
Freelance Enterprises	$34.00	$41.00	$36.00	$30.00
Quality Landscape Management	$34.00	$42.00	$38.00	$34.00
Community EnCompass/YEP (requested 40 public properties for mowing only)	$0.00	$0.00	$25.00 per lot	$0.00
Rays Lawn (incomplete bid)	$0.00	$0.00	$0.00	$0.00

The following contractors submitted a 3 year bid:

Bidders	Trash Crew	Tractor Crew	Mower Crew	Helping Labor (Two Persons)
Freelance Enterprises	$31.00	$40.75	$35.75	$30.00
Quality Landscape Management	$31.00	$40.00	$37.00	$34.00

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Engineering

RE: City – MDOT Agreement for the Reconstruction of: Sherman Blvd. from Lincoln to Estes

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SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the reconstruction of Sherman Blvd. from Lincoln to Estes. And approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the approved federal funds of $481,000. The estimated total construction cost is $1,110,500 plus engineering cost.

BUDGET ACTION REQUIRED:

none

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION__________

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF SHERMAN BLVD. BETWEEN LINCOLN & ESTES TOGETHER WITH OTHER NECESSARY RELATED WORK ITEMS AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK, ANN CUMMINGS, TO EXECUTE SAID CONTRACT

Moved by____________________________________and supported by

Commissioner__________________________that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **12-5241** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Shernan Blvd. between Lincoln St. & Estes** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **12-5241** 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____________day of____________, 2012.

BY

____

Stephen J. Warmington, Mayor

ATTEST

____

Ann Cummings, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on ____________**, 2012**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By___________________________

Ann Becker, City Clerk

STP

	DA
Control Section	STUL 61400
Job Number	114542
Project	STP 1261(219)
Federal Item No.	HH 7944
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	12-5241

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of ______________________, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated May 8, 2012, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION
Concrete pavement work along Sherman Boulevard from Lincoln Street to Estes Street; including aggregate base, sidewalk ramp, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION
Watermain work along Sherman Boulevard from Lincoln Street to Estes Street; 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

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, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

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

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

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

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

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

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

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

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

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

PART A
Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) $481,000, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. 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 of this contract, the provisions of PART I shall prevail.

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

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

9. The REQUESTING PARTY certifies that 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) rests 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 county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

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

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:

By__________________________
Title:

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By__________________________
Department Director MDOT

FORM APPROVED
5/23/2012
P.L.B.
ASSISTANT
ATTORNEY
GENERAL

WCS
REVIEWED
5-18-12

APPROVED BY:
Administrator
Real Estate

5/24/12
Date

May 8, 2012

EXHIBIT I

CONTROL SECTION	STUL 61400
JOB NUMBER	114542
PROJECT	STP 1261(219)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	TOTAL
Estimated Cost	$1,110,500	$230,800	$1,341,300

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$1,110,500	$230,800	$1,341,300
Less Federal Funds*	$ 481,000	$ 0	$ 481,000
BALANCE (REQUESTING PARTY'S SHARE)	$ 629,500	$230,800	$ 860,300

*Federal Funds for the PART A portion of the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

PART II
MODIFIED

STANDARD AGREEMENT PROVISIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. All work shall be performed 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 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.

C. In conformance with FAPG (23 CFR 630C): Project Agreements, the parties 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. 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.

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

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

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

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

D. 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.

E. 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.

F. 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.

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

H. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 201, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

I. 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.

J. 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.

K. 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 canceled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the canceled portions of the PROJECT will be promptly refunded.

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

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FAPG 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. General Conditions:

1. 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.

2. 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.

SECTION IV

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. 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.

B. 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 acquisition.

C. 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.

D. 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 Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 will 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 ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any 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; treatment; 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 shall, 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 its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

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

7. The contractor shall 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 itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State 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, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan 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 Michigan 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 Michigan Civil Rights Commission to participate in such proceedings.

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

<u>Revised June 2011</u>

APPENDIX B
TITLE VI ASSURANCE

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

1. <u>Compliance with Regulations</u>: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. <u>Nondiscrimination</u>: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment 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 contractor covers a program set forth in Appendix B of the Regulations.

3. <u>Solicitation for Subcontracts, Including Procurements of Materials and Equipment</u>: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. <u>Information and Reports</u>: 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 facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. <u>Sanctions for Noncompliance</u>: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

    a. Withholding payments to the contractor until the contractor complies; and/or

    b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material 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 Department or the USDOT 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 from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

Commission Meeting Date: June 12, 2012

Date: **June 5, 2012**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Approval of Contractor for New Construction of House at 605 Jackson**

SUMMARY OF REQUEST: To approve the contract with DeRose Builders Inc, 7786 Wiczer Drive, Whitehall, for the new construction of a house located at 605 Jackson for the cost of $117,446.

The property was purchased with Neighborhood Stabilization funds from the Michigan State Housing Development Authority and HOME funds from HUD will be used for the construction. After the new construction is completed, the home will be marketed to sell to an eligible homebuyer with an annual income less than 80 percent of the area median income.

The City received six bids as listed on the attached spreadsheet.

FINANCIAL IMPACT: Funding for the project has been approved in our current budget (2011 – 2012) from the HOME Investment Partnership funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve for the Community and Neighborhood Services office to prepare an agreement with DeRose Builders and direct the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: None.

605 JACKSON BID RESULTS
Tuesday, MAY 29, 2012

CONTRACTOR	Bid Amount
Beattie Bros. Construction Tony Beattie 5369 Brunswick Holton 49425 231-821-0892, 231-638-3516	$119,460
DeRose Builders Inc Dave DeRose 7786 Wiczer Dr Whitehall 49461 231-893-0025, 231-206-4760	$117,446
Gray Space Construction Curtis Holden 601 Amity Ave Muskegon 49442 231-955-9701	$99,585
JD Fisher Builders Jeff Fisher 123 N 8th Ave Fruitport 49415 231-720-9393	$117,400
Kramer Builders Jerry Kramer 123 Fruitport Rd Spring Lake 49456 616-846-9559, 616-402-0808	$133,224
North Country Construction Michael Fraley PO Box 52 Newaygo 49337 847-308-1571	$169,482

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Liquor License Request
Top Spin, Inc.
2536 Henry Street

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Top Spin, Inc., of 2536 Henry Street to transfer ownership of Escrowed 2011 Class C-SDM Licensed Business with Sunday Sales Permit (PM), Dance-Entertainment Permit, Outdoor Service (1 Area) and Specific Purpose Permit (Food) from Team Red Dawn, LLC.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

Muskegon Police Department
Jeffrey Lewis
Director of Public Safety

980 Jefferson
Muskegon, Michigan
49443-0536

www.muskegonpolice.com

Phone: 231-724-6750
FAX: 231-722-5140

May 24, 2012

To: City Commission through the City Manager

From: Jeffrey Lewis, Director of Public Safety

Re: Liquor License Investigation – 2536 Henry Street
Transfer of 2011 Class C-SDM Licensed Business with Permits

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for a preliminary investigation from applicant Top Spin, Inc of 2536 Henry Street, Muskegon, MI. 49441. The owner of Top Spin, Inc is Hobart Thrasher of 414 Bay Lane, North Muskegon MI 49445.

Top Spin, Inc is requesting to transfer ownership of Escrowed 2011 Class C-SDM licensed business with Sunday Sales Permit (PM), Dance-Entertainment Permit, Outdoor Service (1 Area) and Specific Purpose Permit (Food) from Team Red Dawn, llc. Mr. Thrasher has extensive experience in the alcohol service industry and is aware of the Muskegon Police Departments position on enforcing local alcohol laws and ordinances.

A check of Muskegon Police Department records and criminal history showed no reason to deny this request.

JL/kd

Michigan Department of Licensing and Regulatory Affairs
LIQUOR CONTROL COMMISSION
7150 Harris Drive, P.O. Box 30005
Lansing, MI 48909-7505

INVESTIGATION REPORT

(Authorized by MCL Sec 436.7a)

Grand Rapids District
4/12/2012 dl
REQ ID 654123

NAMES:
Top Spin, Inc.

BUSINESS ADDRESS AND PHONE NO: (Street, City, Twp., County)
2536 Henry, Muskegon, MI 49441, Muskegon County

HOME ADDRESS AND PHONE NO:
Hobart A Thrasher, 414 Bay Lane, North Muskegon, MI 49445, (231) 744-1466, B(231) 578-5444

DBA:

Type of Investigation:
Transfer ownership of an escrowed 2011 Class C and SDM Licensed Business with Sunday Sales Permit (PM), Dance-Entertainment Permit, Outdoor Service (1 Area), and Specific Purpose Permit (Food) from Team Red Dawn LLC.

For reference purposes only

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Fireworks Display Permit for Muskegon Country Club

SUMMARY OF REQUEST: Melrose Pyrotechnics, Inc. is requesting approval of a fireworks display permit for July 4, 2012, at the Muskegon Country Club, 2801 Lakeshore Drive. Fire Marshall Metcalf will inspect the fireworks on the day of the event.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

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

APPLICATION FOR FIREWORKS DISPLAY PERMIT

2012

Michigan Department of Energy, Labor, & Economic Growth
Bureau of Fire Services
P.O. Box 30700
Lansing, MI 48909
(517) 241-8847

Authority: 1968 PA 358 Compliance: Voluntary Penalty: Permit will not be issued	The Department of Energy, Labor & Economic Growth will not discriminate against any individual or group because or race, sex, religion, age, national origin, color, material status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the American with Disabilities Ace, you may make your needs known to this agency.

☒ PUBLIC DISPLAY ☐ AGRICULTURAL PEST CONTROL Date of Application *5/17/12*

Name of Applicant: *MELROSE PYROTECHNICS, INC.*
Address: *P.O. BOX 302, KINGSBURY, IN 46345*
Age (18 or over):

If a Corporation, Name of President: *MICHAEL CARTOLANO*
Address: *P.O. BOX 302, KINGSBURY, IN 46345*

If a Non-resident Applicant: Name of MI Attorney or Resident Agent: *MIKE VAN LOO*
Address: *7441 STOREY RD., BELDING, MI 48809*
Phone No.: *(616) 794-0205*

Name of Pyrotechnic Operator: *MIKE VAN LOO*
Address: *P.O. BOX 123, BELDING, MI 48809*
Age (18 or over): *43*

No. Years Experience: *16 YEARS* No. Displays: *260+*
Where: *MICHIGAN, ILLINOIS, INDIANA, KENTUCKY, OHIO*

Name of Assistant: *JOHN KLAPKO*
Address: *P.O. BOX 123, BELDING, MI 48809*
Age: *49*

Name of Other Assistant: *SCOTT FERMAN*
Address: *P.O. BOX 123, BELDING, MI 48809*
Age: *45*

Exact Location of Proposed Display: *Muskegon Country Club Grounds*

Date of Proposed Display *July4, 2012* Time of Proposed Display *Dusk*

No. Of Fireworks	Kind of Fireworks to be Displayed
Approximately 700	*Aerial display shells ranging in size from 1 1/4 inches to 4 inches in diameter*

Manner & Place of Storage Prior to Display (Subject to Approval of Local Fire Authorities)

NO STORAGE NECESSARY, DELIVERED ON DATE OF DISPLAY

Amount of Bond of Insurance (to be set by local gov't): *$5,000,000.00*

Name of Bonding Corporation or Insurance Company: *BRITTON-GALLAGHER & ASSOCIATES*

Address of Bonding Corporation or Insurance Company: *6240 SOM CENTER RD., CLEVELAND, OH 44139*

Signature of Applicant Wanda Schoof *For Melrose Pyrotechnics, Inc.*

SEE OTHER SIDE FOR INSTRUCTIONS

Permit for Fireworks Display
Michigan Department of Energy, Labor, & Economic Growth
Bureau of Fire Services
P.O. Box 30700
Lansing, MI 48909
(517) 241-8847

2012

Authority: 196+8 PA 358 Compliance: Voluntary Penalty: Permit will not be issued	The Department of Energy, Labor & Economic Growth will not discriminate against any individual or group because or race, sex, religion, age, national origin, color, material status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the American with Disabilities Ace, you may make your needs known to this agency.

This permit is not transferable. It authorizes the resident wholesale dealer or jobber named below to have in his or her possession fireworks of any type, for sale only to holders of permits for public display or agriculture control.

☒ PUBLIC DISPLAY ☐ AGRICULTURAL PEST CONTROL

Issued To MELROSE PYROTECHNICS, INC.		Age (18 or over)
Address 7441 STOREY RD., BELDING, MI 48809		
Name of Organization, Group, Firm, or Corporation Muskegon Country Club		
Address 2801 L:akeshore Drive, Muskegon, MI 49441		
Number and Types of Fireworks Approximately 700 aerial display shells ranging in size from 1 1/4 inches to 4 inches in diameter		
Exact Location of Display 2801 Lakeshore Drive		
City, Village, Township Muskegon	Date July 4, 2012	Time Dusk
Bond or Insurance Filed? ☒ Yes ☐ No		Amount $5,000,000.00

Issued by action of the ☐ council ☐ commission ☐ board of the

☐ city ☐ village ☐ township of ______________________________
(Name of City, Village, Township)

on the ________________ day of ______________________, ____________

____
(Signature and Title of Council/Commission/Board Representative)

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: City Clerk's Office

RE: Polling Sites Relocation

SUMMARY OF REQUEST: Building closures, redistricting, and ADA compliance have forced the City to move polling locations.

Staff proposes to move the following:

Bluffton School (closure) to Great Lakes Naval Museum

McLaughlin School (closure) to City Hall

Hackley Administration Building (ADA Compliance) to City Hall

Nelson School (redistricting) to Department of Public Works

FINANCIAL IMPACT: None.

STAFF RECOMMENDATION: To approve the polling location changes as outlined above.

COMMITTEE RECOMMENDATION: The Election Commission approved the changes as stated at their June 7th meeting.

Commission Meeting Date: June 12, 2012

Date: June 5, 2012

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Title Company for Community and Neighborhood Services

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SUMMARY OF REQUEST: To approve Lighthouse Title, Inc. to be used by the City of Muskegon for title work and closing agency for the CNS Housing program.

FINANCIAL IMPACT: Fees paid from proceeds of sale or project budgets.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve Lighthouse Title, Inc. for Community and Neighborhood Services Title Agency needs.

COMMITTEE RECOMMENDATION: None required.

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: Public Hearing – 2012-13 Budget

SUMMARY OF REQUEST: The City Commission may take action to adopt the 2012-13 budget with whatever changes or adjustments it deems necessary. City ordinance requires the budget be adopted by the second regular City Commission meeting in June.

FINANCIAL IMPACT: The budget sets forth the priorities and overall financial plan for operations in the year 2012-13.

BUDGET ACTION REQUIRED: Adoption of the budget resolution provides the legal appropriation authority necessary for City departments to conduct operations in 2012-13.

STAFF RECOMMENDATION: Receive public comments. Upon closing the public hearing, the City Commission may decide to adopt the budget.

The 2012-13 proposed budget is now available at:

http://www.muskegon-mi.gov/2012-13-proposed-budget/

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: City Manager

RE: Proposed Betten Development Agreement Changes/Promissory Note with BRA

SUMMARY OF REQUEST: The City's Brownfield Redevelopment Authority (BRA) is obligated to reimburse Betten Automotive Group for eligible costs incurred in the redevelopment of their Henry Street project plus 6.5% interest. Total reimbursable costs (plus interest to date) amount to $1,681,590. Under terms of the original development agreement, these costs would be paid by the BRA over several years as tax increment revenues were collected. Interest would continue to accrue on the unpaid balance.

As described more fully in the attached memo, this proposal is for the City to loan the BRA $1.66 million to pay off Betten now. The benefits are as follows:

- Benefit to BRA: reduce interest costs from 6.5% to 3.25% payable to City instead of developer
- Benefit to City: rate of return higher than can be achieved on investments like CD's or US Treasuries
- Benefit to Developer: cash received up front to help facilitate further development of Henry Street corridor (also benefits the City and BRA)

The City would be repaid over thirteen years (or sooner) at a rate of 3.25% from BRA tax increment proceeds.

FINANCIAL IMPACT: The City's loan to the BRA would be carried equally by the following City funds having adequate cash reserves: General Insurance Fund, Equipment Fund and Cemetery Perpetual Care Fund. The 3.25% interest is much better than can be earned on CD's, US Treasuries or other investment instruments. A repayment schedule is attached.

BUDGET ACTION REQUIRED: The BRA budget will be amended to reflect loan payments to the City instead of reimbursements to developer.

STAFF RECOMMENDATION: 1.) Approval of proposed development agreement changes and, 2.) execution of the related promissory note between the City and the BRA.

COMMITTEE RECOMMENDATION: The BRA met on May 29th and approved the proposed development agreement changes and promissory note.

Finance
Administration

Memo

To: Brownfield Redevelopment Authority & City Commission

From: Finance Director

Date: May 25, 2012

Re: Proposal to Change Betten Development Agreement

Background

The 2008 *Brownfield Development and Reimbursement Agreement* between Betten Automotive Group, the City and the Brownfield Authority provides that tax increment revenues from development in the Betten BRA district be primarily used to reimburse the developer for brownfield eligible costs incurred. The agreement further provides that until these costs are reimbursed, interest shall accrue at the rate of 6.5%. Total costs reimbursable to the developer are capped at $3.0 million or the amount of tax increments available for this purpose during a 16-year period ended December 31, 2025.

Current Status

The project is essentially complete and costs eligible for reimbursement amount to $1,464,310. Total interest accrued to date is $217,280 (thru 5/31/12) and is accruing at a rate of $260/day.

Current year tax increment revenues generated by the now completed project will be $157,111.

Proposal

For several months, City staff and Betten have discussed whether a lump sum payout at an agreed to amount might be mutually beneficial. This payout would be facilitated by a loan from the City to the BRA at a rate of 3.25% repaid over thirteen years (see attached amortization schedule) – or sooner if tax collections permit.

- Benefit to BRA: reduce interest costs from 6.5% to 3.25% payable to City instead of developer
- Benefit to City: rate of return higher than can be achieved in investments like CD's or US Treasuries
- Benefit to Developer: cash received up front to help facilitate further development of Henry Street corridor (also a benefit to City and BRA)

Proposed Lump Sum Reimbursement	$ 1,660,000
Reimbursable Costs	$ 1,464,310
Accrued Interest to Date	217,020
Total Payable to Date	$ 1,681,330
Estimated Total Tax Increments Anticipated During 16-year Period (assumes no TV growth)	$ 2,442,334
Estimated Net Tax Increments Paid Out to Betten During 16-year Period (after admin fee and amounts deducted for Heny Street resurfacing)	$ 1,952,917

As the above table summarizes, the lump sum payment amount that Betten and City staff have tentatively agreed to is $1.66 million. Betten is already owed $1,681,330 and interest continues to accrue. If the original agreement is followed, it is estimated payouts to Betten would total $1,952,917, *assuming no increase in taxable property values*. If property values (and tax increments) did increase, payout would be higher and ultimately be capped at $3.0 million.

Risks and Other Considerations

Clearly this type of proposal involves risks that decision-makers must be aware of. The primary risk is that projected tax increments could fail to materialize for a variety of reasons:

- Taxable property values could fall
- Property owner could appeal taxes
- Legislative changes (e.g. elimination of personal property tax)

These risks are very real, but there are some important offsets to weigh as well:

- Unlike other TIF projects (Mall, Smartzone), development is not anticipated but has actually occurred and is generating taxes.
- Current personal property reform discussion centers on manufacturing and industrial taxpayers – not larger commercial enterprises like Betten.
- If tax increments did falter, the BRA can still collect them beyond the original development agreement timeframe (12/31/25). In other word, even in a worst case scenario, the City would be repaid but over a longer period.
- Betten has been among the City's brightest developments in recent years and there is good reason to help them facilitate further property acquisition and development along Henry Street.

Attached to this memo is an amendment *to the Brownfield Development and Reimbursement Agreement* that incorporates the proposal outlined above. This will be discussed at the May 29th BRA meeting.

Thank you.

Summary

Principal borrowed:	$1,660,000.00	**Annual Payments:**	2
Regular Payment amount:	$78,790.37	**Total Payments:**	26 (13.00 years)
Final Balloon Payment:	$0.00	**Annual interest rate:**	3.25%
Interest-only payment:	$26,975.00	**Periodic interest rate:**	1.6250%
***Total Repaid:**	$2,048,549.62	**Debt Service Constant:**	9.4928%
***Total Interest Paid:**	$388,549.62	***Total interest paid as a percentage of Principal:**	23.407%

Pmt	Principal	Interest	Cum Prin	Cum Int	Prin Bal
1	51,815.37	26,975.00	51,815.37	26,975.00	1,608,184.63
2	52,657.37	26,133.00	104,472.74	53,108.00	1,555,527.26
3	53,513.05	25,277.32	157,985.79	78,385.32	1,502,014.21
4	54,382.64	24,407.73	212,368.43	102,793.05	1,447,631.57
5	55,266.36	23,524.01	267,634.79	126,317.06	1,392,365.21
6	56,164.44	22,625.93	323,799.23	148,942.99	1,336,200.77
7	57,077.11	21,713.26	380,876.34	170,656.25	1,279,123.66
8	58,004.61	20,785.76	438,880.95	191,442.01	1,221,119.05
9	58,947.19	19,843.18	497,828.14	211,285.19	1,162,171.86
10	59,905.08	18,885.29	557,733.22	230,170.48	1,102,266.78
11	60,878.53	17,911.84	618,611.75	248,082.32	1,041,388.25
12	61,867.81	16,922.56	680,479.56	265,004.88	979,520.44
13	62,873.16	15,917.21	743,352.72	280,922.09	916,647.28
14	63,894.85	14,895.52	807,247.57	295,817.61	852,752.43
15	64,933.14	13,857.23	872,180.71	309,674.84	787,819.29
16	65,988.31	12,802.06	938,169.02	322,476.90	721,830.98
17	67,060.62	11,729.75	1,005,229.64	334,206.65	654,770.36
18	68,150.35	10,640.02	1,073,379.99	344,846.67	586,620.01
19	69,257.79	9,532.58	1,142,637.78	354,379.25	517,362.22
20	70,383.23	8,407.14	1,213,021.01	362,786.39	446,978.99
21	71,526.96	7,263.41	1,284,547.97	370,049.80	375,452.03
22	72,689.27	6,101.10	1,357,237.24	376,150.90	302,762.76
23	73,870.48	4,919.89	1,431,107.72	381,070.79	228,892.28
24	75,070.87	3,719.50	1,506,178.59	384,790.29	153,821.41
25	76,290.77	2,499.60	1,582,469.36	387,289.89	77,530.64
26	*77,530.64	1,259.87	1,660,000.00	388,549.76	0.00

*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

CHEVROLET Cadillac GMC

5/24/2012

Bryon Mazade
City of Muskegon
933 Terrace Street
Muskegon, MI 49440

Dear Bryon,

This letter will confirm our intentions of expanding our real estate holdings on Henry Street. As you know, we have made major upgrades to our existing Chevy dealership, and constructed new Honda and Hyundai dealerships. We have also demolished the dilapidated Sherwin Williams store and recently cleaned up the property so that we can have asphalt put down and use it for vehicle display.

We are currently looking at three different properties that we share boundaries with. We have a offer in on one of these properties. Our intentions are to secure properties that we share boundaries with so we are prepared if additional business opportunities arise.

We value the relationship we have established with you and the city over the last several years. If you would like to discuss this in greater detail please feel free to give me a call.

Sincerely,

Bryan Betten
President
Betten Chevrolet

2474 Henry Street • Muskegon, MI 49441
Tel: (231) 755-3711 • Toll Free: 1-800-323-6164 • Fax: (231) 755-8103 • bettengm.com

FIRST AMENDMENT TO THE BROWNFIELD DEVELOPMENT AND REIMBURSEMENT AGREEMENT (Site S - - Betten Auto Dealership).

THE AGREEMENT made this ____day of __________, 2012, between the City of Muskegon, 933 Terrace Street, Muskegon, Michigan 49443-0536 ("City"), Brownfield Redevelopment Authority of the City of Muskegon, of 933 Terrace Street, Muskegon, Michigan 49443-0536 ("Authority"), and Betten Chevrolet, Inc. and Betten Automotive Group, Inc. of 2474 South Henry Street, Muskegon, Michigan 49441 (jointly referred to as "Developer").

RECITALS

A. The City and Authority amended the City of Muskegon Brownfield Redevelopment Authority Brownfield Plan ("Plan") in May of 2008 to add Betten Auto Dealership as Site S.

B. The City, Authority and Developer executed a Brownfield Development and Reimbursement Agreement, dated on or about May 13, 2008 providing for Developer to develop property it owns on Henry Street in the City of Muskegon.

C. Developer executed a Promissory Note and Mortgages in favor of the City relating to a MDEQ Brownfield Loan. Developer has paid off its obligations relating to the MDEQ Brownfield Loan and the City has cancelled the Promissory Note and discharged the Mortgages.

D. Developer has acquired the former Sherwin Williams Property, located at 2425 South Henry Street, which is adjacent to the property owned by Developer.

E. Developer has made substantial environmental improvements on its property subject to the Brownfield Plan, as adopted in 2008. Developer has and will make substantial improvements on the Sherwin Williams Property. Developer has Eligible Activities under the Brownfield Plan and will undertake further Eligible Activities as that term is defined by the Brownfield Redevelopment Financing Act, Act 381 of 1996.

F. Pursuant to the Brownfield Development and Reimbursement Agreement, the Authority has an obligation in the future to reimburse Developer for the cost of Eligible Activities using tax captured revenues. City is willing to lend monies to the Authority so that the Authority can satisfy its obligation to Developer and Authority would reimburse the City from future tax captured monies.

G. Developer and City had discussed adding the former Sherwin Williams Property to the City of Muskegon Brownfield Redevelopment Authority Brownfield

Plans. Developer and City agree that the former Sherwin Williams Property shall not now nor in the future be added to the Plan.

H. In consideration of the matters described above and of the mutual benefits set forth in this Agreement, the parties agree as follows:

GENERAL PROVISIONS

1. The Site Specific Provisions for Site S (Betten Auto Dealership) of the City of Muskegon Brownfield Redevelopment Authority Brownfield Plan shall not be amended to add the former Sherwin Williams site.

2. City shall lend $1.66 million to the Authority to pay Authority's obligations to Betten. City and Authority shall execute necessary documents to evidence Authority's obligation to repay the City loan from taxes captured from Site S (Betten Auto Dealership).

3. Within 30 days of the execution of this Agreement, Authority shall pay Developer $1.66 million dollars in full satisfaction of its obligations to pay Developer pursuant to the Brownfield Development and Reimbursement Agreement, as amended.

4. The Brownfield Development and Reimbursement Agreement is amended to reflect that the Authority is relieved of any obligation to pay Developer, or any other party except the City, for Eligible Activities. Authority shall continue to capture taxes from the original site and the amended site in order to satisfy the loan made by the City to the Authority reflected in this Agreement, the Authority's Administration Fee, and all City expenses, including the Henry Street Resurfacing.

5. Developer waives its right to request reimbursement for any other Eligible Activities, now or in the future, that exceeds the $1.66 million limit in paragraph 2. City acknowledges and agrees that all of Developer's obligations under Section 5 of the Brownfield Development and Reimbursement Agreement entitled "East Sewer Line Relocation and West Sewer Line Work" have been satisfactorily completed or are otherwise hereby waived.

6. In all other respects, City of Muskegon Brownfield Redevelopment Authority Brownfield Plan and the Brownfield Development and Reimbursement Agreement are unaffected and remain in full force and effect.

The remainder of this page is intentionally left blank.

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

THE CITY OF MUSKEGON

By: ______________________________

Its: ______________________________

BROWNFIELD REDEVELOPMENT AUTHORITY OF THE CITY OF MUSKEGON

By: ______________________________

Its: ______________________________

BETTEN CHEVROLET, INC.
a Michigan corporation

By: ______________________________
Bryan Betten
Its: President

BETTEN AUTOMOTIVE GROUP, INC.
a Michigan corporation

By: ______________________________
Bryan Betten
Its: President

PROMISSORY NOTE

$1,660,000.00 Muskegon, Michigan
May ____, 2012

FOR VALUE RECEIVED, the undersigned, **BROWNFIELD REDEVELOPMENT AUTHORITY OF THE CITY OF MUSKEGON,** with a mailing address of 933 Terrace Street, Muskegon, Michigan 49443 (hereinafter the "Authority") promises to pay to the order of **CITY OF MUSKEGON**, a municipal corporation, with a mailing address of 933 Terrace Street, Muskegon, Michigan 49443 (hereinafter the "City") at its office, or such other place as may be designated in writing by the holder hereof to the undersigned, the principal sum of One Million Six Hundred Thousand Sixty Dollars ($1,660,000.00) payable over a term of up to thirteen years.

Interest shall accrue from the date hereof on the principal balance of this Note at a rate of 3.25 percent per annum.

Payments of all accrued interest and principal amortized shall be due and payable in twenty six semi-annual payments, July 1 and January 1, with the first payment being due and payable on July 1, 2012. A final payment of all principal and accrued shall be due and payable to January 1, 2025.

All interest due and payable under this Note shall be computed on the basis of the actual number of days elapsed over a 360-day year.

Authority may prepay this note in whole or in part at any time. Early payments will reduce the principal balance due.

Authority hereby grants to City, a continuing lien, security interest and right of setoff as security for all liabilities and obligations to City, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of City or any entity under the control of or common control with City and its successors and assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by Authority), City may set off the same or any part thereof and apply the same to any liability or obligation of Authority even though un-matured and regardless of the adequacy of any other collateral. ANY AND ALL RIGHTS TO REQUIRE CITY TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWERS ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

The acceptance by the holder hereof of any payment after any default hereunder shall not operate to extend the time of payment of any amount then remaining unpaid hereunder or constitute a waiver of any rights of the holder hereof under this Note.

The word "holder" as used herein shall mean the payee or endorsee of this Note who is in possession of it, or the bearer, if this Note is at the time payable to the bearer.

This Note may not be amended, changed or modified in any respect except by a written document which has been executed by each party.

If this Note is placed by the holder hereof in the hands of any attorney for collection through legal proceedings or otherwise or is placed in the hands of any attorney for representation of the holder hereof in the proceedings commenced by or against the undersigned under any bankruptcy or insolvency law of the United States or of any state and whether in adversary proceeding or otherwise, then the undersigned shall pay reasonable attorneys' fees to the holder hereof together with reasonable costs and expenses of collection or such representation.

THE AUTHORITY AND THE CITY AGREE THAT NEITHER OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS PROMISSORY NOTE, ANY RELATED INSTRUMENTS, OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE AUTHORITY AND THE CITY, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE AUTHORITY NOR THE CITY HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

Presentment, notice of dishonor, protest, notice of protest, demand, and notice of default are hereby waived expressly by each and every party as maker or endorser hereon.

WITNESS:	BROWNFIELD REDEVELOPMENT AUTHORITY OF THE CITY OF MUSKEGON,
__________________________	______________________________ By: Its:

Date: June 12, 2012

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Engineering Services Agreement for Williams Street Storm Outlet

SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Flies & Vandenbrink Engineering out of Muskegon to perform an emergency survey, design and permitting project to replace/repair a 54" storm sewer outlet at the northerly end of Williams street just north of White Street for an estimated cost of $9,800.

FINANCIAL IMPACT:

The engineering cost of $9,800 at this time.

BUDGET ACTION REQUIRED:

This project will have to be added to the 2012/2013 budget

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with F & V engineering. This recommendation was arrived to due to the urgency of the current condition of the storm sewer outlet and complexity of the project.

COMMITTEE RECOMMENDATION:

FLEIS & VANDENBRINK
ENGINEERING, INC.
Offices in Michigan and Indiana

June 7, 2012

Mr. Mohammed Al-Shatel
City of Muskegon
933 Terrace Street
Muskegon, MI 49443

RE: Williams Street Storm Sewer Replacement

Dear Mohammed:

As requested, we have reviewed the existing 54" storm sewer at the north end of Williams Street where the line goes down the hill and outfalls into the Ryerson Creek. The existing pipe has separated at a few joints and is causing erosion of the bank and surrounding area.

We are providing you with an estimate for engineering design to replace the section of pipe down the hill and to the outfall. From our site visit we observed serious erosion problems at the north end of Williams Street where the storm sewer has eroded the bank and caused trees to fall down. It appears that the replacement portion would be limited to beginning at the top of bank and going down to the outfall, However, we recommend the storm line be videotaped beginning at the manhole at Williams Street & White Avenue to determine the condition and extent of replacement.

Our fee for survey, design and permitting the storm sewer replacement down the bank and to the outfall is estimated at $9,800.

If you should have any questions, feel free to call.

Sincerely,

FLEIS & VANDENBRINK ENGINEERING, INC.

Don DeVries, P.E.
Project Manager

316 Morris Ave., Suite 230, Muskegon, MI 49440 • Office: (231) 726-1000 • Fax: (231) 726-2200 • www.fveng.com