

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**JUNE 8, 2004**

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

### **AGENDA**

- ❑ **CALL TO ORDER:**
- ❑ **PRAYER:**
- ❑ **PLEDGE OF ALLEGIANCE:**
- ❑ **ROLL CALL:**
- ❑ **HONORS AND AWARDS:**
- ❑ **INTRODUCTIONS/PRESENTATION**
  - A. Introduction of Summer Interns. AFFIRMATIVE ACTION
- ❑ **CONSENT AGENDA:**
  - A. Approval of Minutes. CITY CLERK
  - B. Fireworks Display – Muskegon Country Club. CITY CLERK
  - C. Fireworks Display – Muskegon Summer Celebration. CITY CLERK
  - D. Housing Commission Appointment – Jerry Lottie. CITY MANAGER
  - E. Sale of Non-Buildable Lot at 1164 Ambrosia Street. PLANNING & ECONOMIC DEVELOPMENT
  - F. City-MDOT Agreement for McCracken St., Sherman Blvd. to Lakeshore Drive. ENGINEERING
- ❑ **PUBLIC HEARINGS:**
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**
  - A. DNR Harbors and Docks-Mooring Construction Agreement. LEISURE SERVICES
  - B. Liquor License Request – Polly Anna's Whole Foods. CITY CLERK
  - C. FIRST READING: Illicit Discharge and Connection Ordinance. PUBLIC WORKS

D. Purchase of 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES

E. Approval of 2004-2005 Subrecipient and Community Housing Development Organization (CHDO) Agreements. COMMUNITY & NEIGHBORHOOD SERVICES

F. Shoreline Drive East – Agreement with Consumer Energy to Provide Power. ENGINEERING

G. Seaway Industrial Park Easements. ENGINEERING

H. MCACA Grant Application. CITY MANAGER

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION**

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

☐ **ADJOURNMENT:**

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

**Date: June 8, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Gail A. Kunding, City Clerk**  
**RE: Approval of Minutes**

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SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, May 25, 2004.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**JUNE 8, 2004**

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

### **MINUTES**

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon Michigan at 5:30 p.m., Tuesday, June 8, 2004.

Mayor Warmington opened the meeting with a prayer from Pastor Bob Rogers of the Oak Crest Church of God after which the Commission and Public recited the Pledge of Allegiance to the Flag.

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

Present: Mayor Stephen Warmington, Vice Mayor Bill Larson, Commissioners Lawrence Spataro, Chris Carter, Kevin Davis, Stephen Gawron, Clara Shepherd, and City Manager Bryon Mazade, City Attorney John Schrier and City Clerk Gail Kunding.

#### **2004-53 INTRODUCTIONS/PRESENTATION:**

##### **A. Introduction of Summer Interns. AFFIRMATIVE ACTION**

Ken James, Affirmative Action Director, introduced the summer interns.

#### **2004-54 CONSENT AGENDA:**

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

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, May 25, 2004.

FINANCIAL IMPACT: None

BUDGET ACTION: None

STAFF RECOMMENDATION: Approval of the minutes.

##### **B. Fireworks Display – Muskegon Country Club. CITY CLERK**

SUMMARY OF REQUEST: Melrose Pyrotechnics, Inc. is requesting approval of a fireworks display permit at the Muskegon Country Club, 2801 Lakeshore Drive for July 4<sup>th</sup>. Fire Marshall Metcalf will inspect the fireworks.

FINACIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

**C. Fireworks Display – Muskegon Summer Celebration. CITY CLERK**

SUMMARY OF REQUEST: Steve Franklin, Summit Pyrotechnics, is requesting approval of a fireworks display permit for June 26<sup>th</sup> and 29<sup>th</sup>, and July 1<sup>st</sup> and 4<sup>th</sup>. Fire Marshall Metcalf will inspect the fireworks.

FINACIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

**D. Housing Commission Appointment – Jerry Lottie. CITY MANAGER**

SUMMARY OF REQUEST: To appoint Jerry Lottie to fill the unexpired term of Reverend Kirksey (deceased).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the appointment.

**E. Sale of Non-Buildable Lot at 1164 Ambrosia Street. PLANNING & ECONOMIC DEVELOPMENT**

SUMMARY OF REQUEST: To approve the sale of a vacant non-buildable lot (Parcel #24-205-249-0003-00) at 1164 Ambrosia Street to Marge Stafford, owner of 1160 Ambrosia Street, Muskegon, MI. Approval of this sale will allow the owner to expand her current yard. Since the RT-Two Family Residential zoning requires 75 ft. of frontage, it would not be possible for the adjacent property owner to have a buildable lot if we were to offer this lot to them. Therefore, the lot is being offered to Ms. Stafford for \$1 under the Dollar Lot Marketing Plan for residential lots.

FINANCIAL IMPACT: The sale of this lot will allow the property to be placed back on the City's tax rolls, thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign the resolution and deed.

**F. City-MDOT Agreement for McCracken St., Sherman Blvd. to Lakeshore Drive. ENGINEERING**

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of McCracken St. from Sherman Blvd. to Lakeshore Dr. and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT'S participation is estimated a \$552,354 but not to exceed 81.85% of eligible cost. The estimated total construction cost (without engineering) of the project, including the non-participating items of watermain & sanitary sewer, is \$1,180,200.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

STAFF RECOMMENDATION: That the agreement and resolution be approved.

**G. Community Relation Appointments.** CITY CLERK

SUMMARY OF REQUEST: To approve the appointment of Aime Brown to the Historic District Commission replacing Lois Cole, and reappoint Barbara VanFossen to the District Library Board.

STAFF RECOMMENDATION: Approval.

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended approval at their June 7<sup>th</sup> meeting.

**Motion by Commissioner Spataro, second by Vice Mayor Larson to approve the Consent Agenda.**

**ROLL VOTE: Ayes: Warmington, Carter, Davis, Gawron, Larson, Shepherd, Spataro**

**Nays: None**

**MOTION PASSES**

**2004-55 NEW BUSINESS:**

**A. DNR Harbors and Docks-Mooring Construction Agreement.** LEISURE SERVICES

SUMMARY OF REQUEST: To approve the agreement with the Department of Natural Resources (DNR) for construction and improvements at Hartshorn Municipal Marina.

FINANCIAL IMPACT: \$2,000,000 with the MDNR providing \$1,000,000 as a 50% match.

BUDGET ACTION REQUIRED: Match will need to be provided by either a bond or loan to be paid off by the marina.

STAFF RECOMMENDATION: Approve.

**Motion by Vice Mayor Larson, second by Commissioner Gawron to approve the agreement.**

**ROLL VOTE: Ayes: Carter, Davis, Gawron, Larson, Shepherd, Spataro, Warmington**

**Nays: None**

**MOTION PASSES**

**B. Liquor License Request – Polly Anna's Whole Foods.** CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Polly Anna's Whole Foods of 1848 E.

Sherman Blvd. for a new SDM licensed business.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve

**Motion by Commissioner Spataro, second by Vice Mayor Larson to approve the request for a new SDM license.**

**ROLL VOTE: Ayes: Davis, Gawron, Larson, Shepherd, Spataro, Warmington, Carter**

**Nays: None**

**MOTION PASSES**

**C. FIRST READING: Illicit Discharge and Connection Ordinance. PUBLIC WORKS**

SUMMARY OF REQUEST: The City's permit (Certificate of Coverage) to discharge storm water to waters of the state requires the adoption of an ordinance to prohibit illicit connections of non-storm water to the municipal storm water collection system. The ordinance is recommended by our consultant, FTCH, and has been reviewed and approved as corrected by the City Attorney.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None. Expenses are budgeted under the Storm Water Budget.

STAFF RECOMMENDATION: To approve the adoption of the Illicit Discharge and Connection Ordinance.

**Motion by Commissioner Davis, second by Commissioner Carter to approve the adoption of the Illicit Discharge and Connection Ordinance.**

**ROLL VOTE: Ayes: Gawron, Larson, shepherd, Spataro, Warmington, Carter, Davis**

**Nays: None**

**MOTION PASSES**

**D. Purchase of 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES**

SUMMARY OF REQUEST: To approve the purchase of the property located at 510 Creston (City of Muskegon Urban Renewal Plat number 2 Lot 349) from the U.S. Department of Housing and Urban Development for the amount of \$16,500. If approved, CNS will solicit bids to rehabilitate the structure at 510 Creston and later sell the totally rehabilitated home to a qualified low/moderate-income family, which will continue the City's neighborhood revitalization efforts by returning once blighted homes to the tax roll and eliminating their blighting influence on their specific neighborhood.

FINACIAL IMPACT: Funding for the purchase and rehabilitation will be deducted from the City's 2002 HOME funding.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

COMMITTEE RECOMMENDATION: None.

**Motion by Commissioner Carter, second by Commissioner Gawron to approve the purchase of 510 Creston.**

**ROLL VOTE: Ayes: Larson, Shepherd, Spataro, Warmington, Carter, Davis, Gawron**

**Nays: None**

**MOTION PASSES**

**E. Approval of 2004-2005 Subrecipient and Community Housing Development Organization (CHDO) Agreements. COMMUNITY & NEIGHBORHOOD SERVICES**

SUMMARY OF REQUEST: To direct the Mayor and City Clerk to sign all of the 2004-2005 approved agreements for the City's subrecipients and Coho's. The City Commission approved the funding for each of the nonprofits last spring during the City's Consolidated Planning process. After the Mayor and Clerk sign the contracts, the CNS office will retain one copy for their files and a copy will be supplied to the appropriate nonprofit for their records.

FINANCIAL IMPACT: Funding will be allocated from the 2004-2005 CDBG and HOME programs.

BUDGET ACTION REQUIRED: None. The City Commission made budgeting decision last spring.

STAFF RECOMMENDATION: To direct Mayor and Clerk to sign agreements.

**Motion by Commissioner Spataro, second by Commissioner Carter to direct Mayor and Clerk to sign agreements.**

**ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Carter, Davis, Gawron, Larson**

**Nays: None**

**MOTION PASSES**

**F. Seaway Industrial Park Easements. ENGINEERING**

SUMMARY OF REQUEST: Authorize staff to record or cause the recording of three public utility easement within the area know as the Seaway Industrial Park as shown and described on the survey document. The easements are for existing utilities and are necessary to insure proper documentation to establish such utilities ahead of any real estate transaction. The three easements are

1. A 33' for WM along the west side of parcel A for an existing 36" WM
2. The NW part of parcel A for a water & sewer service
3. A 50' storm sewer easement for the old Rudiment

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approve the recording of utility easements.

**Motion by Commissioner Gawron, second by Commissioner Spataro to approve the recording of the utility easements.**

**ROLL VOTE: Ayes: Spataro, Warmington, Carter, Davis, Gawron, Larson, Shepherd**

**Nays: None**

**MOTION PASSES**

**G. Shoreline Drive East – Agreement with Consumer Energy to Provide Power. ENGINEERING**

**STAFF REQUESTED THIS ITEM BE REMOVED.**

**H. MCACA Grant Application. CITY MANAGER**

SUMMARY OF REQUEST: To authorize applying for a MCACA grant on behalf of the Frauenthal Center for the Performing Arts for capital improvements to the Hilt Building.

FINANCIAL IMPACT: None. The community Foundation will be responsible for the grant match.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To authorize the application.

COMMITTEE RECOMMENDATION: None

**Motion by Commissioner Spataro, second by Commissioner Shepherd to authorize applying for the MCACA grant.**

**ROLL VOTE: Ayes: Warmington, Carter, Davis, Gawron, Larson, Shepherd, Spataro**

**Nays: None**

**MOTION PASSES**

**I. Boilerworks Project. CITY MANAGER**

SUMMARY OF REQUEST: To authorize staff to work with HDC Companies to designate the Boilerworks property (including the "yellow building") as a historic district and include it in the City's Brownfield Plan (including a letter of support).

FINANCIAL IMPACT: None

STAFF RECOMMENDATION: None

COMMITTEE RECOMMENDATION: None

**Motion by Vice Mayor Larson, second by Commissioner Shepherd to authorize staff to work with HDC Companies to designate the Boilerworks property as a historic district and include it in the City's Brownfield Plan.**

**ROLL VOTE: Ayes: Carter, Larson, Shepherd, Warmington**

**Nays: Davis, Gawron, Spataro**

**MOTION PASSES**

The Regular Commission Meeting for the City of Muskegon adjourned at 5:58 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gail A. Kunding". The signature is written in a cursive, flowing style.

Gail A. Kunding, MMC  
City Clerk

**Date: June 8, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Gail A. Kunding, City Clerk**  
**RE: Fireworks Display – Muskegon Country Club**

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SUMMARY OF REQUEST: Melrose Pyrotechnics, Inc. is requesting approval of a fireworks display permit at the Muskegon Country Club, 2801 Lakeshore Drive for July 4<sup>th</sup>. Fire Marshall Metcalf will inspect the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

PERMIT  
FOR FIREWORKS DISPLAY

2004-54(b)

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

☒ PUBLIC DISPLAY

☐ AGRICULTURAL PEST CONTROL

|                                                                                                                                             |  |                                 |                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|---------------------------------------|
| Issued To<br><b>MELROSE PYROTECHNICS, INC.</b>                                                                                              |  | Age (18 or over)                |                                       |
| Address<br><b>P.O. BOX 123, BELDING, MI 48809</b>                                                                                           |  |                                 |                                       |
| Name of Organization, Group, Firm, or Corporation<br><b>Muskegon Country Club</b>                                                           |  |                                 |                                       |
| Address<br><b>2801 Lakeshore Drive, Muskegon, Michigan</b>                                                                                  |  |                                 |                                       |
| Number and Types of Fireworks<br><b>Approximately 1,200 aerial display shells ranging in size from 1 1/4 inches to 8 inches in diameter</b> |  |                                 |                                       |
| Exact Location of Display<br><b>2801 Lakeshore Drive</b>                                                                                    |  |                                 |                                       |
| City, Village, Township<br><b>Muskegon</b>                                                                                                  |  | Date<br><b>July 4, 2004</b>     | Time<br><b>Approximately 10:00 pm</b> |
| Bond or Insurance Filed?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                             |  | Amount<br><b>\$5,000,000.00</b> |                                       |

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

☒ city ☐ village ☐ township of City of Muskegon

(Name of City, Village, Township)

on the 8<sup>th</sup> day of June, 2004

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

Stephen J. Warmington, Mayor

AUTHORITY: 1988 PA 358  
COMPLIANCE: Required  
PENALTY:

FM-51 (3-98)  
MICHIGAN STATE POLICE  
FIRE MARSHAL DIVISION

## APPLICATION FOR FIREWORKS DISPLAY PERMIT

| <input checked="" type="checkbox"/> PUBLIC DISPLAY                                                            | <input type="checkbox"/> AGRICULTURAL PEST CONTROL                              | Date of Application 3/1/04                                                         |
|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Name of Applicant<br>MELROSE PYROTECHNICS, INC.                                                               | Address<br>P.O. BOX 302, KINGSBURY, IN 46345                                    | Age (18 or over)                                                                   |
| If a Corporation, Name of President<br>MICHAEL CARTOLANO                                                      | Address<br>P.O. BOX 302, KINGSBURY, IN 46345                                    |                                                                                    |
| If a Non-resident Applicant: Name of MI Attorney or Resident Agent<br>MIKE VAN LOO                            | Address<br>P.O. BOX 123, BELDING, MI 48809                                      | Phone No.<br>(616) 794-0205                                                        |
| Name of Pyrotechnic Operator<br>MIKE VAN LOO                                                                  | Address<br>P.O. BOX 123, BELDING, MI 48809                                      | Age (18 or over)<br>34                                                             |
| No. Years Experience    No. Displays<br>14 YEARS                  250+                                        | Where<br>MICHIGAN, ILLINOIS, INDIANA, KENTUCKY, OHIO                            |                                                                                    |
| Name of Assistant:<br>JOHN KLAPKO                                                                             | Address<br>P.O. BOX 123, BELDING, MI 48809                                      | Age<br>40                                                                          |
| Name of Other Assistant:<br>SCOTT FERMAN                                                                      | Address<br>P.O. BOX 123, BELDING, MI 48809                                      | Age<br>36                                                                          |
| Exact Location of Proposed Display<br>Muskegon Country Club grounds                                           |                                                                                 |                                                                                    |
| Date of Proposed Display July 4, 2004                  Time of Proposed Display Dusk - Approximately 10:00 pm |                                                                                 |                                                                                    |
| No. Of Fireworks                                                                                              | Kind of Fireworks to be Displayed                                               |                                                                                    |
| Approximately 1200                                                                                            | Aerial display shells ranging in size from 1 1/4 inches to 8 inches in diameter |                                                                                    |
|                                                                                                               |                                                                                 |                                                                                    |
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|                                                                                                               |                                                                                 |                                                                                    |
| <b>Manner &amp; Place of Storage Prior to Display (Subject to Approval of Local Fire Authorities)</b>         |                                                                                 |                                                                                    |
| NO STORAGE NECESSARY, DELIVERED ON DATE OF DISPLAY                                                            |                                                                                 |                                                                                    |
| Amount of Bond of Insurance (to be set by local gov't)<br>\$5,000,000.00                                      |                                                                                 | Name of Bonding Corporation or Insurance Company<br>BRITTON-GALLAGHER & ASSOCIATES |
| Address of Bonding Corporation or Insurance Company<br>6240 SOM CENTER RD., CLEVELAND, OH 44139               |                                                                                 |                                                                                    |
| Signature of Applicant<br> |                                                                                 |                                                                                    |
| For Melrose Pyrotechnics, Inc.                                                                                |                                                                                 |                                                                                    |

**SEE OTHER SIDE FOR INSTRUCTIONS**

**Authority:** 1988 PA 358  
**Compliance:** Voluntary but a permit will not be issued without an application.

|                                                                                                        |  |                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>                                                       |  | DATE (MM/DD/YYYY)<br>4/21/2004                                                                                                                                                                              |
| <b>PRODUCER</b><br>Britton-Gallagher and Associates, Inc.<br>6240 SOM Center Rd.<br>Cleveland OH 44139 |  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| <b>INSURED</b><br>Melrose Pyrotechnics, Inc.<br>P.O. Box 302<br>Kingsbury IN 46345                     |  |                                                                                                                                                                                                             |
|                                                                                                        |  | <b>INSURERS AFFORDING COVERAGE</b>                                                                                                                                                                          |
|                                                                                                        |  | <b>INSURER A:</b> Lexington Insurance Co                                                                                                                                                                    |
|                                                                                                        |  | <b>INSURER B:</b> Granite State Insurance Co.                                                                                                                                                               |
|                                                                                                        |  | <b>INSURER C:</b> Arch Specialty Ins Company                                                                                                                                                                |
|                                                                                                        |  | <b>INSURER D:</b> Travelers Indemnity Co.                                                                                                                                                                   |
|                                                                                                        |  | <b>INSURER E:</b>                                                                                                                                                                                           |

**COVERAGES**

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

| INSR ADD'L LTR INRS | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                       | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                               |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A                   | <b>GENERAL LIABILITY</b><br><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. <input type="checkbox"/> LOC | 5315723       | 4/1/2004                           | 4/1/2005                            | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 50,000<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS-COMP/OP AGG \$ 2,000,000      |
| B                   | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS                           | CA62659311    | 4/1/2004                           | 4/1/2005                            | COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY: EA ACC \$<br>AGG \$ |
|                     | <b>GARAGE LIABILITY</b><br><input type="checkbox"/> ANY AUTO                                                                                                                                                                                                                                            |               |                                    |                                     |                                                                                                                                                                                                                                      |
| C                   | <b>EXCESS/UMBRELLA LIABILITY</b><br><input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br><input type="checkbox"/> DEDUCTIBLE<br><input checked="" type="checkbox"/> RETENTION \$ 10,000                                                                                    | 42ULP1485100  | 4/1/2004                           | 4/1/2005                            | EACH OCCURRENCE \$ 4,000,000<br>AGGREGATE \$ 4,000,000<br>\$<br>\$<br>\$                                                                                                                                                             |
| D                   | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below<br>OTHER                                                                                                                           | 401X5907      | 4/1/2004                           | 4/1/2005                            | <input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                   |

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

DISPLAY DATE: July 4, 2004

LOCATION: Muskegon Country club - Muskegon, Michigan

ADDITIONAL INSURED: Muskegon Country Club; City of Muskegon, Michigan; Mr. Ron Whorton

**CERTIFICATE HOLDER**

Muskegon Country Club  
 Mr. Todd Beale  
 2801 Lakeshore Drive  
 Muskegon MI 49441

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

*[Signature]*



# Muskegon Country Club

May 24, 2004

Linda Potter, CMC  
Deputy Clerk, City of Muskegon  
933 Terrace Street  
Muskegon, MI 49440

Dear Ms. Potter:

Based on our recent conversation, I am forwarding the fireworks display permit, the certificate of liability insurance and the application fee of \$50.00. Our fireworks display is planned for July 4, 2004.

Please call me if you have any questions. I can be reached at 231-755-3737.

Most Sincerely,

  
Rebecca Harding

*cc: Fire*

THIS CHECK IN PAYMENT  
OF THE FOLLOWING INVOICES

| INVOICE | AMOUNT |
|---------|--------|
|         |        |
|         |        |
|         |        |
|         |        |
|         |        |
|         |        |
|         |        |
|         |        |
|         |        |



**MUSKEGON COUNTRY CLUB**  
2801 LAKESHORE DRIVE  
MUSKEGON, MICHIGAN 49441

74-1394  
724

6717

COMMUNITY SHORES BANK  
1030 W. NORTON  
MUSKEGON, MI 49441

PAY Fifty & 70/100 DOLLARS

| NUMBER | DATE    | TO THE ORDER OF  |
|--------|---------|------------------|
| 6717   | 5/31/04 | City of Muskegon |

| GROSS |
|-------|
|       |

| DISCOUNT | NET AMOUNT OF CHECK |
|----------|---------------------|
|          | 5000                |

MUSKEGON COUNTRY CLUB

*Lauretta L. Brandy*

⑈006717⑈ ⑆072413942⑆ 1000002049⑈

864006-07-99

**Date: June 8, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Gail A. Kunding, City Clerk**  
**RE: Fireworks Display – Muskegon Summer Celebration**

---

SUMMARY OF REQUEST: Steve Franklin, Summit Pyrotechnics, is requesting approval of a fireworks display permit for June 26<sup>th</sup> and 29<sup>th</sup>, and July 1<sup>st</sup> and 4<sup>th</sup>. Fire Marshall Metcalf will inspect the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

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

DATE OF APPLICATION

May 28, 2004

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

## 2. APPLICANT

|                                                              |                                     |                         |
|--------------------------------------------------------------|-------------------------------------|-------------------------|
| NAME OF PERSON<br><i>Summit Pyrotechnics</i>                 | ADDRESS<br><i>3500 S. Getty St.</i> | AGE: Must be 21 or over |
| IF A CORPORATION: Name of President<br><i>Steve Franklin</i> | ADDRESS                             |                         |

## 3. PYROTECHNIC OPERATOR

|                                 |                                     |                                                    |
|---------------------------------|-------------------------------------|----------------------------------------------------|
| NAME<br><i>Steve Franklin</i>   | ADDRESS<br><i>3500 S. Getty St.</i> | AGE: Must be 21 or over                            |
| EXPERIENCE: <i>Ph. 206 7029</i> |                                     |                                                    |
| NUMBER OF YEARS<br><i>15</i>    | NUMBER OF DISPLAYS<br><i>400 +</i>  | WHERE<br><i>FL, MA, HI, IL, IN, MD, MI, NY, DC</i> |

## NAMES OF ASSISTANTS:

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

## 4. NON-RESIDENT APPLICANT

|                                             |         |                  |
|---------------------------------------------|---------|------------------|
| NAME                                        | ADDRESS |                  |
| Name of Michigan Attorney or Resident Agent | ADDRESS | TELEPHONE NUMBER |

## 5. EXACT LOCATION OF PROPOSED DISPLAY

|                                                        |                           |
|--------------------------------------------------------|---------------------------|
| <i>Barge Muskegon Lake 800' N. of Heritage Landing</i> |                           |
| DATE<br><i>July 4th. 1st. June 26, 29</i>              | TIME<br><i>10:20 p.m.</i> |
| <i>Rain dates June 27, 30, July 2nd 5th</i>            |                           |

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

*20-12"*

*20-10"*

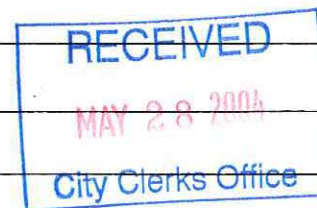
*48-8"*

*500-6"*

*400-5"*

*800-4"*

*1500-3"*



## MANNER &amp; PLACE OF STORAGE PRIOR TO DISPLAY

*A.T.F. approved storage magazine shipped to site day of show*

(Subject to Approval of Local Fire Authorities)

## 7. FINANCIAL RESPONSIBILITY

A. AMOUNT OF BOND OR INSURANCE  
(to be set by municipality) \$

B. BONDING CORPORATION OF INSURANCE COMPANY: NAME

ADDRESS

# PERMIT

## FOR FIREWORKS DISPLAY

### Act 358, P.A. 1968

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

TYPE OF DISPLAY:                    ☒ PUBLIC DISPLAY                    ☐ AGRICULTURAL PEST CONTROL

ISSUED TO:     Summit Pyrotechnics

NAME             Steve Franklin

ADDRESS         3500 S. Getty                    AGE

REPRESENTING     Muskegon Summer Celebration

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

ADDRESS

NUMBER & TYPES OF FIREWORKS:

20 12"; 20 10"; 48 8"; 500 6"; 400 5"; 800 4"; 1500 3"

DISPLAY:             Barge - Muskegon Lake

EXACT LOCATION     800' N of Heritage Landing

CITY, VILLAGE, TOWNSHIP                    DATE                    TIME  
                                                          June 26 & 29; July 1 & 4                    10:20 p.m.

BOND OR INSURANCE FILED:                    ☐ YES                    ☐ NO                    AMOUNT

ISSUED BY:

Issued by action of the MUSKEGON CITY COMMISSION

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

on the 8<sup>th</sup> day of June, 2004

Stephen J. Warmington, Mayor

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

**Certificate of Insurance**

50462

Issue Date: 06/10/2004

**PRODUCER**  
Combined Specialty International, Inc.  
8362 Larnack Village  
Suite 110  
Woodbury, Minnesota 55125

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

**INSURERS AFFORDING COVERAGE**

INSURER A: Underwriters, Lloyds of London

INSURER B:

INSURER C:

INSURER D:

**INSURED**  
Summit Pyrotechnics  
3500 E. Golly Street  
Muskegon, Michigan 49444

**COVERAGE**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE NAMED INSURED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES INCLUDING, BUT NOT LIMITED TO THOSE FOLLOWING: LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. ADDITIONAL CONDITIONS AND EXCLUSIONS: 1) THE INSURANCE EVIDENCED BY THIS CERTIFICATE IS LIABILITY INSURANCE ONLY. IT IS NOT A BOND OR ANY FORM OF SURETY AGAINST WHICH SOMEONE OTHER AN 'INSURED' MAY ASSERT A CLAIM OR BRING ANY ACTION. SUBJECT TO POLICY TERMS, CONDITIONS, DEFINITIONS AND EXCLUSIONS THE INSURANCE ONLY INDEMNIFIES AN INSURED AGAINST CERTAIN LEGAL LIABILITY. 2) THE INSURANCE DOES NOT COVER CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE OF THE NAMED INSURED'S SHOOTER(S) ASSISTANT(S) OR ANY OTHER PERSON(S) INCLUDING ANY VOLUNTEER(S) PARTICIPATING IN ANY WAY IN ANY DISPLAY OR SPECIAL EFFECT PERFORMED OR EXECUTED BY THE NAMED INSURED. 3) COVERAGE DOES NOT APPLY TO CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE ARISING OUT OF THE INSURED'S FAILURE TO FOLLOW NFPA OR OTHER APPLICABLE REQUIREMENTS, LAWS OR RECOMMENDATIONS, INCLUDING THOSE RELATING TO POST DISPLAY OR SPECIAL EFFECT SEARCHES OR CLEAN UP.

| CO LTR | TYPE OF INSURANCE                                                                        | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS                              |             |
|--------|------------------------------------------------------------------------------------------|---------------|----------------------------------|-----------------------------------|-------------------------------------|-------------|
| A      | GENERAL LIABILITY CLAIMS MADE                                                            | 1088125593004 | June 10, 2004                    | June 10, 2005                     | EACH ACCIDENT                       | \$1,000,000 |
|        |                                                                                          |               |                                  |                                   | MEDICAL EXP (any one person)        | \$5,000     |
|        |                                                                                          |               |                                  |                                   | FIRE LEGAL LIABILITY                | \$50,000    |
|        |                                                                                          |               |                                  |                                   | GENERAL AGGREGATE                   | \$2,000,000 |
|        |                                                                                          |               |                                  |                                   | PRODUCTS-COMPIOPS AGG               | \$1,000,000 |
|        | AUTOMOBILE LIABILITY ANY-AUTO ANY OWNED-AUTO SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS |               |                                  |                                   | COMBINED SINGLE LIMIT (Ea accident) | \$          |
|        |                                                                                          |               |                                  |                                   | BODILY INJURY (Per person)          | \$          |
|        |                                                                                          |               |                                  |                                   | BODILY INJURY (Per accident)        | \$          |
|        |                                                                                          |               |                                  |                                   | PROPERTY DAMAGE (Per person)        | \$          |
|        | EXCESS LIABILITY FOLLOWING FORM                                                          |               |                                  |                                   | EACH ACCIDENT                       | \$          |
|        |                                                                                          |               |                                  |                                   | AGGREGATE                           | \$          |
|        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                            |               |                                  |                                   | WG STATU- OTHER TORY LIMITS         | \$          |
|        |                                                                                          |               |                                  |                                   | E.L. EACH ACCIDENT                  | \$          |
|        |                                                                                          |               |                                  |                                   | E.L. DISEASE-EA EMPLOYER            | \$          |
|        |                                                                                          |               |                                  |                                   | E.L. DISEASE-POLICY LIMIT           | \$          |
|        | OTHER                                                                                    |               |                                  |                                   |                                     |             |

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**  
Muskegon Summer Celebration; City of Muskegon; County of Muskegon and West Michigan Deck & Market Co. are Additional Insured as respects the June 26 & 27, 2004 and July 1 & 4, 2004 Fireworks Displays at Heritage Landing, Muskegon, MI

**CERTIFICATE HOLDER**  
Muskegon Summer Celebration  
587 W. Western Avenue  
Muskegon, MI

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

**AUTHORIZED REPRESENTATIVE**

AGENDA ITEM NO. \_\_\_\_\_

CITY COMMISSION MEETING 6/8/04

**TO:** Honorable Mayor and City Commissioners  
**FROM:** Bryon L. Mazade, City Manager  
**DATE:** May 20, 2004  
**RE:** Housing Commission Appointment – Jerry Lottie

**SUMMARY OF REQUEST:**

To appoint Jerry Lottie to fill the unexpired term of Reverend Kirksey (deceased).

**FINANCIAL IMPACT:**

None.

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To approve the appointment.

**COMMITTEE RECOMMENDATION:**

RECEIVED

MAY 20 2004

CITY OF MUSKEGON  
Talent Bank ApplicationMUSKEGON  
CITY MANAGER'S OFFICE

Please Type or Print. Applications will be kept on file for one year. All applicants subject to a background check.

NAME: Jerry Lottie DATE: 5-12-04  
 HOME ADDRESS: 1710 Jefferson Street, Muskegon, Mich 49444  
 (Street, City, State, Zip)  
 HOME PHONE #: 231-722-0944 WORK PHONE #: Cell # 740-7349  
 OCCUPATION: Retired  
 (If retired, give former occupation)  
 EDUCATION: High School Grad - Attended M.C.C. - Certificate - Real Estate  
Grand Valley State Univ. Civil Rights Relations Labor Relations - Attended  
Michigan State University - Attended M.C.C. Leadership Training Academy  
 PERSONAL & COMMUNITY ACTIVITIES: Civil Participation:  
1. Jerry General Hospital Board 3. Family Center  
2. Community Foundation Board 4. Department of Employment & Training  
 INTEREST IN SERVING: \_\_\_\_\_

PERSONAL REFERENCES: (Please list the name and phone numbers of three personal references)

|                                      |                 |
|--------------------------------------|-----------------|
| 1. <u>Rev George Bennett</u>         | <u>773-0412</u> |
| (Name)                               | (Phone Number)  |
| 2. <u>Attny Theodore N. Williams</u> | <u>726-4857</u> |
| (Name)                               | (Phone Number)  |
| 3. <u>Derrick Knox</u>               | <u>740-0582</u> |
| (Name)                               | (Phone Number)  |

PLEASE INDICATE BOARDS/COMMISSIONS/COMMITTEES INTERESTED IN SERVING ON - MARKING #1 AS YOUR FIRST PREFERENCE:--

- |                                                                          |                                                            |
|--------------------------------------------------------------------------|------------------------------------------------------------|
| <input type="checkbox"/> Board of Canvassers                             | <input type="checkbox"/> Housing Code Board of Appeals     |
| <input type="checkbox"/> Board of Review                                 | <input checked="" type="checkbox"/> Housing Commission     |
| <input type="checkbox"/> Cemetery Committee                              | <input type="checkbox"/> Image Committee                   |
| <input type="checkbox"/> Citizen's Police Review Board                   | <input type="checkbox"/> Income Tax Board of Review        |
| <input type="checkbox"/> City Employees Pension Board                    | <input type="checkbox"/> Land Reutilization Committee      |
| <input type="checkbox"/> Civil Service Commission                        | <input type="checkbox"/> Leisure Services Board            |
| <input type="checkbox"/> CDBG-Citizen's District Council                 | <input type="checkbox"/> Loan Fund Advisory Committee      |
| <input type="checkbox"/> Construction Board of Appeals                   | <input type="checkbox"/> Local Develop. Finance Authority  |
| <input type="checkbox"/> District Library Board                          | <input type="checkbox"/> Local Officer's Compensation Com. |
| <input type="checkbox"/> Downtown Development Authority/Brownfield Board | <input type="checkbox"/> Planning Commission               |
| <input type="checkbox"/> Election Commission                             | <input type="checkbox"/> Police/Fireman's Pension Board    |
| <input type="checkbox"/> Enterprise Community Citizen Council            | <input type="checkbox"/> Public Relations Committee        |
| <input type="checkbox"/> Equal Opportunity Committee                     | <input type="checkbox"/> Zoning Board of Appeals           |
| <input type="checkbox"/> Historic District Commission                    | <input type="checkbox"/> Other _____                       |
| <input type="checkbox"/> Hospital Finance Authority                      |                                                            |

\* Attach Additional Sheets or Resume if Desired.

Return this form to: City Clerk's Office, 833 Terrace St., P. O. Box 536, Muskegon, MI 49443-0536

RECEIVED

MAY 20 2004

MUSKEGON  
CITY MANAGER'S OFFICE

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

Assessor/Equalization  
(231)724-6708  
FAX: (231)726-5181

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

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

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

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

Community and  
Neigh. Services  
(231)724-6717  
FAX: (231)726-2501

Computer Info.  
Systems  
(231)724-6744  
FAX: (231)722-4301

Engineering Dept.  
(231)724-6707  
FAX: (231)727-6904

Finance Dept.  
(231)724-6713  
FAX: (231)724-6768

Fire Dept.  
(231)724-6792  
FAX: (231)724-6985

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

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

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

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

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

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

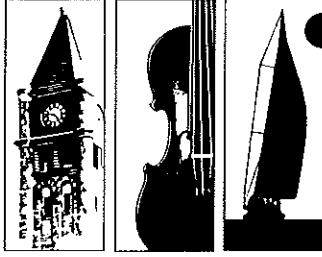
Public Works Dept.  
(231)724-4100  
FAX: (231)722-4188

Treasurer's Office  
(231)724-6720  
FAX: (231)724-6768

Water Billing Dept.  
(231)724-6718  
FAX: (231)724-6768

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

# MUSKEGON



West Michigan's Shoreline City

June 14, 2004

Mr. Jerry Lottie  
1710 Jefferson  
Muskegon, MI 49441

Dear Jerry:

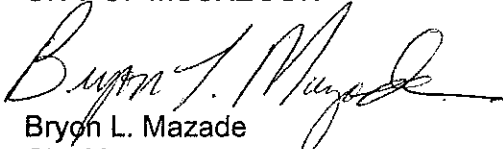
Congratulations on your appointment to the Muskegon Housing Commission.  
The term of the appointment will run through January 31, 2005.

The Housing Commission will contact you regarding meeting dates, etc.

Thank you for your willingness to serve in this capacity.

Sincerely,

CITY OF MUSKEGON

  
Bryon L. Mazade  
City Manager

BLM/js

c: Yvonne Morrissey, Executive Director  
Gail Kunding, City Clerk

JMS - O: (LOTTIE-HOUSING COM APT)

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

**Commission Meeting Date: June 8, 2004**

**Date:** May 25, 2004  
**To:** Honorable Mayor and City Commissioners  
**From:** Planning & Economic Development *Cbe*  
**RE:** Sale of Non-Buildable Lot at 1164 Ambrosia Street

---

**SUMMARY OF REQUEST:**

To approve the sale of a vacant non-buildable lot (Parcel #24-205-249-0003-00) at 1164 Ambrosia Street to Marge Stafford, owner of 1160 Ambrosia Street, Muskegon, MI. Approval of this sale will allow the owner to expand her current yard. Since the RT-Two Family Residential zoning requires 75 ft. of frontage, it would not be possible for the adjacent property owner to have a buildable lot if we were to offer this lot to them. Therefore, the lot is being offered to Ms. Stafford for \$1 under the Dollar Lot Marketing Plan for residential lots.

**FINANCIAL IMPACT:**

The sale of this lot will allow the property to be placed back on the City's tax rolls, thus relieving the City of continued maintenance costs.

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To approve the attached resolution and to authorize both the Mayor and the Clerk to sign the resolution and deed.

**COMMITTEE RECOMMENDATION:**

**CITY OF MUSKEGON**

**RESOLUTION #2004- 54 ( e )**

RESOLUTION APPROVING THE SALE OF A CITY-OWNED NON-BUILDABLE LOT

WHEREAS, the City of Muskegon has received \$1 from Marge Stafford, 5881 Rollenhagen Road, Ravenna, MI 49441 for the purchase of a vacant, non-buildable City-owned lot located adjacent to her property at 1164 Ambrosia Street, Muskegon Avenue (parcel #24-205-249-0003-00); and

WHEREAS, this lot is considered unbuildable under the City's Zoning Ordinance; and

WHEREAS, the sale would enable the City to place this property back on the tax rolls, and would relieve the City of further maintenance; and

WHEREAS, the sale of this property would be in accordance with property disposition goals and the Dollar Lot Marketing Plan.

NOW, THEREFORE BE IT RESOLVED, that THE CITY OF MUSKEGON REVISED PLAT OF 1903 N ½ LOT 3 BLK 249 be sold to Marge Stafford for \$1.

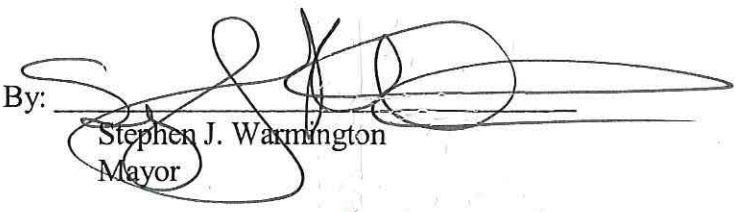
Resolution adopted this 8<sup>th</sup> day of June, 2004.

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

Nays: None

Absent: None

By: \_\_\_\_\_

  
Stephen J. Warmington  
Mayor

Attest: \_\_\_\_\_

  
Gail A. Kunderinger, MMC  
Clerk

## **CERTIFICATION**

2004-54(e)

This resolution was adopted at a regular meeting of the City Commission, held on June 8, 2004. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

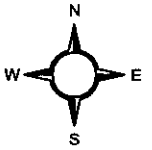
CITY OF MUSKEGON

By



Gail A. Kunding, MMC  
Clerk

# Vacant Non-Buildable City-Owned Lot 1164 Ambrosia Street



QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the **CITY OF MUSKEGON**, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440,

QUIT CLAIMS to **MARGE STAFFORD**, of 5881 Rollenhagen Road, Ravenna, Michigan 49451,

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

CITY OF MUSKEGON REVISED PLAT OF 1903 N ½ LOT 3 BLK249

for the sum of: One Dollar (\$1.00)

PROVIDED, HOWEVER, If the Grantee or adjoining property owner loses the adjoining property due to foreclosure or non-payment of taxes, the non-buildable lot shall revert to the Grantor. At that point in time when any lien covers both parcels or there are not liens on either parcel, the property owner may request and the Grantor shall agree to waive and terminate the reverter clause.

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

Dated this 6<sup>th</sup> day of July, 2004.

Signed in the presence of:

Linda Potter  
Linda Potter

Jo Ann Krkowski  
Jo Ann Krkowski

CITY OF MUSKEGON

By [Signature]  
Stephen J. Warmington, Its Mayor

and [Signature]  
Gail A. Kundering, MMC, Its Clerk

STATE OF MICHIGAN  
COUNTY OF MUSKEGON

Signed and sworn to before me in Muskegon County, Michigan, on July 6, 2004 by STEPHEN J. WARMINGTON and GAIL A. KUNDERING, MMC, the Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

(NOTARY SEAL)

Linda S. Potter  
Linda S. Potter, Notary Public  
Acting in the County of Muskegon  
Muskegon County, Michigan  
My Comm. Expires: 9-25-06

PREPARED BY: John C. Schrier  
Parmenter O'Toole  
175 W. Apple Avenue/P.O. Box 786  
Muskegon, MI 49443-0786  
Telephone: 231/722-1621

WHEN RECORDED RETURN TO: Grantee

SEND SUBSEQUENT TAX BILLS TO: Grantee

**Date: June 8, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Engineering**  
**RE: City – MDOT Agreement for:**  
**McCracken St., Sherman Blvd. to Lakeshore Dr.**

---

**SUMMARY OF REQUEST:**

To approve the attached contract with MDOT for the reconstruction of McCracken St. from Sherman Blvd. to Lakeshore Dr. and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

**FINANCIAL IMPACT:**

MDOT's participation is estimated at \$552,354 but not to exceed 81.85% of eligible cost. The estimated total construction cost (without engineering) of the project, including the non-participating items of watermain & sanitary sewer, is \$1,180,200

**BUDGET ACTION REQUIRED:**

None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

**STAFF RECOMMENDATION:**

That the attached agreement and resolution be approved.

**COMMITTEE RECOMMENDATION:**

RESOLUTION 2004-54(f)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF MCCrackEN ST. FROM SHERMAN BLVD. TO LAKESHORE DR. ALONG WITH SOME WATER MAIN WORK TOGETHER WITH THE NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

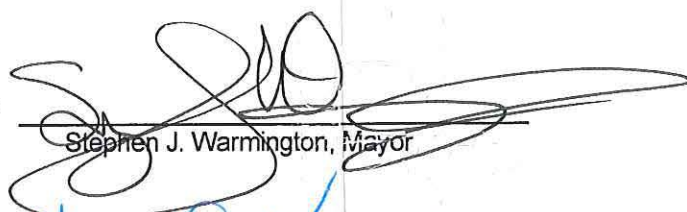
Moved by Commissioner Spataro and supported by Vice Mayor Larson that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **04-5202** between the Michigan Department of Transportation and the City of Muskegon for the reconstruction of McCracken St. from Sherman Blvd. to Lakeshore Dr. within the City is in the best interests of the City of Muskegon.

**RESOLVED**, that entry by the City into Contract Agreement Number **04-5202** 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 8<sup>th</sup> day of June, 2004.

BY

  
Stephen J. Warmington, Mayor

ATTEST

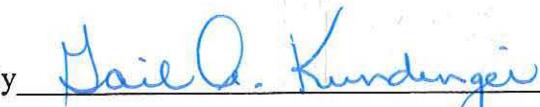
  
Gail A. Kunderinger, City Clerk

**CERTIFICATION**

This resolution was adopted at a meeting of the City Commission, held on June 8, **2004**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

**CITY OF MUSKEGON**

By

  
Gail A. Kunderinger, Clerk



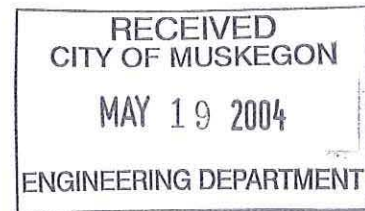
JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
**DEPARTMENT OF TRANSPORTATION**  
LANSING

GLORIA J. JEFF  
DIRECTOR

May 17, 2004

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



Dear Ms. Kunding:

RE: MDOT Contract No.: 04-5202  
Control Section: STUL 61407  
Job Number: 56380

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

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

     **Secure the necessary signatures on all contracts.**

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

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

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

Sincerely,

Jackie Burch  
Contract Processing Specialist  
Design Support Area

Enclosure



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
**DEPARTMENT OF TRANSPORTATION**  
LANSING

GLORIA J. JEFF  
DIRECTOR

June 21, 2004

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

Dear Ms. Kunderinger:

RE: MDOT Contract Number: 04-5202  
Control Section: STUL 61407  
Job Number: 56380

Enclosed is a fully executed copy of the above noted agreement.

Sincerely,

A handwritten signature in cursive script that reads "Jackie Burch".

Jackie Burch  
Contract Processing Specialist  
Design Support Area

Enclosure

Cc: M. Harbison, Design Support Area  
Project Accounting, Financial Operations Division  
Grand Region Engineer

STP

DIR

|                  |                |
|------------------|----------------|
| Control Section  | STUL 61407     |
| Job Number       | 56380          |
| Project          | STP 0461 (311) |
| Federal Item No. | HH 3958        |
| CFDA No.         | 20.205         |
| Contract No.     | 04-5202        |

## PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of JUN 18 2004, 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 6, 2004, attached hereto and made a part hereof:

### PART A – FEDERAL PARTICIPATION

Reconstruction work along McCracken Street from Sherman Boulevard to Lakeshore Drive; including concrete curb and gutter, drainage structures, hot mix asphalt pavement, sidewalk repair, and pavement marking work; and all together with necessary related work.

### PART B – NO FEDERAL PARTICIPATION

Sanitary sewer, watermain, sidewalk, and driveway work along McCracken Street from Sherman Boulevard to Lakeshore Drive; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 81.85 percent up to an amount not to exceed \$552,354. 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. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway 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:

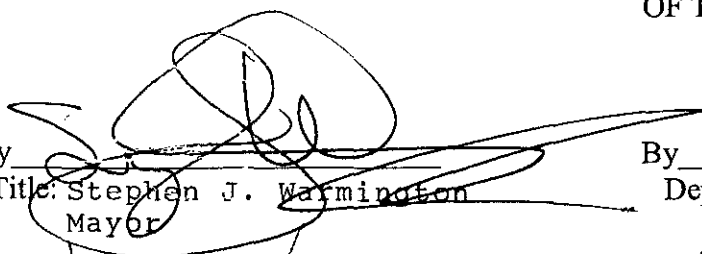
- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING 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.

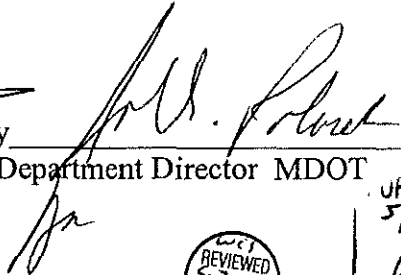
18. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective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

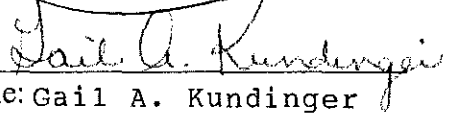
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

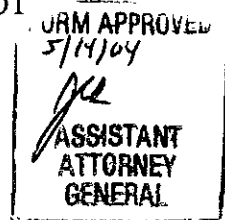
CITY OF MUSKEGON

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

By   
Title: Stephen J. Warmington  
Mayor

By   
Department Director MDOT

By   
Title: Gail A. Kunderger  
City Clerk



May 6, 2004

EXHIBIT I

|                 |                |
|-----------------|----------------|
| CONTROL SECTION | STUL 61407     |
| JOB NUMBER      | 56380          |
| PROJECT         | STP 0461 (311) |

ESTIMATED COST

CONTRACTED WORK

|                | <u>PART A</u> | <u>PART B</u> | <u>TOTAL</u> |
|----------------|---------------|---------------|--------------|
| Estimated Cost | \$865,400     | \$314,800     | \$1,180,200  |

COST PARTICIPATION

|                                    |           |           |             |
|------------------------------------|-----------|-----------|-------------|
| GRAND TOTAL ESTIMATED COST         | \$865,400 | \$314,800 | \$1,180,200 |
| Less Federal Funds*                | \$552,354 | \$ -0-    | \$ 552,354  |
| BALANCE (REQUESTING PARTY'S SHARE) | \$313,046 | \$314,800 | \$ 627,846  |

\*Federal Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 81.85 percent up to an amount not to exceed \$552,354.

NO DEPOSIT

DOT

TYPE B  
BUREAU OF HIGHWAYS  
03-15-93

## PART II

### STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

## SECTION I

### COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

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

## SECTION II

### PROJECT ADMINISTRATION AND SUPERVISION

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

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

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

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

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

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

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

## SECTION III

### ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

- a. Agencies expending a total of \$300,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

billing. All billings shall be labeled either "Progress Bill Number \_\_\_\_\_". or "Final Billing".

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

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

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

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

## SECTION IV

### MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

- a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic Control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).
- b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

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

- c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.
- d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

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

## SECTION V

### SPECIAL PROGRAM AND PROJECT CONDITIONS

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

**APPENDIX A**  
**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

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

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

March, 1998

## APPENDIX B

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

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

## **APPENDIX C**

### **TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES**

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

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

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

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

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

**Date: May 17, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Melissa Haug, Recreation/Marina Supervisor**  
**RE: DNR Harbors and Docks-Mooring Construction Agreement**

---

**SUMMARY OF REQUEST:**

To approve the agreement with the Department of Natural Resources (DNR) for construction and improvements at Hartshorn Municipal Marina.

**FINANCIAL IMPACT:**

\$2,000,000 with the MDNR providing \$1,000,000 as a 50% match.

**BUDGET ACTION REQUIRED:**

Match will need to be provided by either a bond or loan to be paid off by the marina

**STAFF RECOMMENDATION:**

Approve

**COMMITTEE RECOMMENDATION:**

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

Assessor/Equalization  
(231)724-6708  
FAX: (231)726-5181

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

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

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

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

Community and  
Neigh. Services  
(231)724-6717  
FAX: (231)726-2501

Computer Info.  
Systems  
(231)724-6744  
FAX: (231)722-4301

Engineering Dept.  
(231)724-6707  
FAX: (231)727-6904

Finance Dept.  
(231)724-6713  
FAX: (231)724-6768

Fire Dept.  
(231)724-6792  
FAX: (231)724-6985

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

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

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

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

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

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

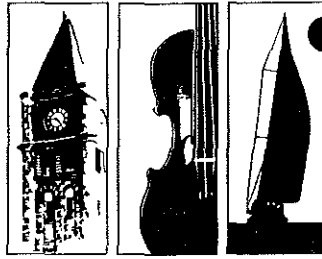
Public Works Dept.  
(231)724-4100  
FAX: (231)722-4188

Treasurer's Office  
(231)724-6720  
FAX: (231)724-6768

Water Billing Dept.  
(231)724-6718  
FAX: (231)724-6768

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

# MUSKEGON



West Michigan's Shoreline City

Date: May 17, 2004

To: Honorable Mayor and City Commissioners

From: Melissa Haug, Recreation/Marina Supervisor

Re: DNR Harbors and Docks-Mooring Construction Agreement

I am requesting your approval of the attached grant agreement with the DNR for money to do scheduled improvements at Hartshorn Municipal Marina. The work will include, rebuilding the seawalls, reconfiguring docks, and other necessary improvements based on the engineering study done by The Abonmarche Group in 2001.

The total grant is for \$2,000,000 with the local match of the services to the City being \$1,000,000 as the grant requires a 50% match. The match will need to be in the form of a loan or bond that would be repaid by the marina fund.

Thank you for your consideration.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
LANSING

K. L. COOL  
DIRECTOR

May 4, 2004

Ms. Melissa Haug  
Recreation Marina Supervisor  
Department of Leisure Services  
933 Terrace Street  
P.O. Box 536  
Muskegon, Michigan 49443-0536

Dear Ms. Haug:

**Subject: Grant-in-Aid Agreement between the City of Muskegon and the Michigan Department of Natural Resources**

Enclosed are two copies of a Grant-in-Aid Agreement between City of Muskegon and the Michigan Department of Natural Resources, in the rehabilitation and upgrade of the Hartshorn Marina facilities. Also enclosed are two copies of a Resolution for adoption by the City authorizing execution of the Agreement.

After the Resolution and Agreement are signed, all copies should be returned to me for Department signatures. One completely executed copy of the Agreement will then be returned for the City's files.

If, after reviewing these materials, you have any questions, do not hesitate to call me.

Sincerely,

Paul Petersen  
Program Manager  
Parks and Recreation Bureau  
517-335-3033

PP:dm  
Enclosures

## RESOLUTION

Upon motion made by Vice Mayor Larson, seconded by Commissioner Gawron the following Resolution was adopted:

"RESOLVED, that the City of Muskegon, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the City does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate the sum of One Million dollars (\$1,000,000.00) to match the One Million dollars (\$1,000,000.00) State grant authorized by the Department.
2. To maintain satisfactory financial accounts, documents, and records and to make them available to the Department for auditing at reasonable times.
3. To construct the facility and provide such funds, services, and materials as may be necessary to satisfy the terms of the said Agreement.
4. To establish and appoint the City of Muskegon, to regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
5. To enforce within the confines of the City all State statutes and local ordinances pertaining to marine safety and to enforce statutes of the State of Michigan within the confines of the City pertaining to the licensing of watercraft. Watercraft not fully complying with the laws of the State of Michigan relative to licensing shall not be permitted to use the said facility until full compliance with such laws has been made.
6. To comply with any and all terms of the said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution."

The following aye votes were recorded: 7

The following nay votes were recorded: 0

STATE OF MICHIGAN     )  
                                  )     §  
COUNTY OF MUSKEGON   )

I, Gail A. Kunderger, Clerk of the City of Muskegon, Michigan, do hereby certify that the above is true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources which Resolution was adopted by the City Board at a meeting held June 8, 2004.

Gail A. Kunderger  
City Clerk

Dated: June 8, 2004

## **AGREEMENT**

2004-55(a)

### **Harbors and Docks – Mooring Construction**

**THIS AGREEMENT**, made this 8<sup>th</sup> day of June, 2004, by and between the CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, hereinafter referred to as the "City", and the MICHIGAN DEPARTMENT OF NATURAL RESOURCES, an agency of the State of Michigan, hereinafter referred to as the "Department".

**WHEREAS**, the City is an important center of recreational boating activity and serves as a refuge point for shallow-draft recreational vessels; and

**WHEREAS**, the City has solicited the aid and assistance of the Department in the rehabilitation and upgrade of the Hartshorn Marina facilities; and

**WHEREAS**, the City and Department jointly participated in the engineering study for preparation of plans and specifications; and

**WHEREAS**, the Department agrees to enter into a program with the City to construct facilities costing an estimated total of Two Million dollars (\$2,000,000.00), said amount to be shared between the City and the Department through this Waterways Grant Agreement, with the funds to be shared 50% State, One Million dollars (\$1,000,000.00), and 50% City, One Million dollars (\$1,000,000.00).

**NOW, THEREFORE**, in consideration of the mutual promises and conditions hereinafter contained, the parties agree as follows:

1. It is agreed by and between the parties hereto that this Agreement shall be administered on behalf of the Department through its Parks and Recreation Bureau. All reports, documents, or actions required of the City by this Agreement shall be submitted to the Acting Bureau Chief, Parks and Recreation Bureau, Mason Building, Third Floor, P.O. Box 30257, Lansing, Michigan 48909.

2. The use herein of the words "plans and specifications" shall mean those plans and specifications developed for the City of Muskegon for Hartshorn Marina, prepared by a consulting firm duly licensed to perform professional services within the State of Michigan

3. The Department agrees as follows:

(a) To grant to the City a sum of money equal to Fifty (50) percent of the cost of construction of the facilities called for by the said plans and specifications, including final engineering costs, but which shall not in any event exceed One Million dollars (\$1,000,000.00).

(b) The monies herein granted shall be released according to the following schedule:

Twenty-five (25) percent of the total grant upon acceptance by the City of the terms of this Agreement, written Department approval of final plans and specifications (bidding documents), receipt of all necessary permits, and upon an award of contract to a competent contractor to accomplish the work called for by the said plans and specifications following bidding procedures acceptable to the State and City.

The remaining portions of the State Funds, except for the final Ten (10) percent thereof, shall be disbursed upon completion of work and receipt from the contractor of progress payment requests that are approved for payment by the project manager/engineer. The final Ten (10) percent of State Funds hereinbefore authorized shall be paid upon completion of the project and 60 days after receipt of project cost documentation to the Department by

the City or completion of an audit of the expenditures therefore by the Department, whichever occurs first.

(c) To advise in the operation of said facilities by making available to the City the resources of the Department and the experience gained by the Department in construction and operating similar boating projects in other parts of the State of Michigan.

4. The City agrees as follows:

(a) To immediately appropriate the sum of One Million (\$1,000,000.00) dollars. This sum represents Fifty (50) percent of the total cost of the project work called for by this Agreement. Any additional funds needed to complete this work, called for in this Agreement, shall be provided by the City.

(b) To construct the facilities to the satisfaction of the Department, and to provide such funds, services, and materials as may be necessary to satisfy the terms of this Agreement. The City agrees that there shall be no deviation from the said plans and specifications without the express consent in writing of the Acting Bureau Chief of the Parks and Recreation Bureau of the Department.

(c) To use all funds granted by the Department to this Agreement solely for the conduct and completion of the project work. The City shall maintain satisfactory financial accounts, documents and records and shall make them available to the Department for auditing at reasonable times. Such accounts, documents, and records shall be retained by the City for a period of not less than three (3) years following completion of the study called for herein.

(d) To establish or assign a competent and proper agency of said City to operate said facilities, and to regulate the use thereof and to provide for the maintenance thereof to the satisfaction of the Department, and to appropriate such monies and/or provide such service as shall be necessary to provide such adequate maintenance.

(e) To provide to the Department for approval, a complete tariff schedule containing all charges to be assessed against watercraft utilizing such facilities, and to provide the Department for approval, all amendments thereto prior to the effective date of such amendments. Any fee schedule adopted by the City shall provide for sufficient income to defray operating and maintenance expenses of the project exclusive of depreciation. No fees shall be imposed for the use of such facilities unless they have been specifically approved by the Department in writing. Any net revenues accruing from the operation of the facilities shall be separately accounted for and reserved in a restricted fund by the City for the future maintenance and/or expansion of the facility, or with the Department's approval, for the construction of other recreational boating facilities. Written approval to vary from fee rates set by the Michigan State Waterways Commission shall be requested annually.

(f) To enforce within the confines of the City all state and local statutes and ordinances pertaining to marine safety, licensing of watercraft, and the dispensing of marine fuel.

(g) To furnish the Department, upon request, detailed statements covering the annual operation of said facilities, including boat traffic, income, and expenses for the 12 months ending December 31<sup>st</sup> of each year.

(h) To hold and save the State of Michigan and the Department free from damages or any suits brought against the City due to construction and/or maintenance of said facilities, and to provide such evidence of the obligation as the Department may reasonably require.

(i) To maintain throughout the life of this Agreement suitable signs for both land and water approached designating this project as one having been constructed by the City and the Department. The size, color, and design of these signs shall be approved by the Department before being constructed.

(i) To adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the Department prior to the effective date thereof.

(k) To participate in the State Harbor Reservation System.

(l) To provide upon request, a seasonal boat slip at no cost for Department--owned vessels.

5. It is expressly understood and agreed by and between the parties hereto that neither this Agreement, nor any section, paragraph, provision, or portion hereof shall be in any way construed to impose any obligation of whatsoever nature, financial or otherwise upon the Department as regards the subsequent operation and/or maintenance of any recreational boating facilities.

6. It is agreed by and between the parties hereto that the facilities constructed under this Agreement and the land and water access ways to the said facilities shall be constructed only in accordance with the plans and specifications approved by the Department.

7. It is agreed by and between the parties hereto that no less than One Hundred (100%) percent of facilities constructed pursuant to this Agreement, or pursuant to any amendments or extensions thereof, shall, in perpetuity, be reserved by the City for the exclusive use and/or rental, on a daily basis, by the operations of recreational watercraft, unless otherwise authorized in writing by the Department.

8. It is agreed by and between the parties hereto that commercial operation of any type shall not be permitted to regularly use any of the said facilities or to be located thereon without first securing the approval in writing of both the City and the Department.

9. It is agreed by and between the parties hereto that the facilities constructed under this Agreement and the land and water access ways to the said facilities shall be open to the public at all times on equal and reasonable terms and that no individual shall be denied ingress or egress thereto or the use thereof on the basis of race, color, religion, national origin, or ancestry, and any violation of this stipulation shall be deemed to be a material breach of Contract, subject to penalties as hereinafter provided.

(a) In connection with the performance of work or exercise of right and privileges granted under this Agreement, the City agrees as follows:

(1) It will not discriminate in any solicitation or advertisement or against any employee or applicant for employment, on the basis of race, color, religion, national origin, age, sex, ancestry, height, weight, or marital status. Such action shall include, but not be limited to: employment upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) It or its collective bargaining representative will send to each labor union representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative its commitments under this Paragraph.

(3) It will comply with all published rules, regulations, directives, and orders of the Michigan Civil Rights Commission relevant to Section 206, 1976 PA 453, as amended.

(4) It will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each Subcontractor as well as the City itself, and said City will permit access to its books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this contract and with rules, regulations, and orders of the Civil Rights Commission relevant to Section 206, 1976 PA 453, as amended.

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

(6) The City will include, or incorporate by reference, the provisions of the foregoing Subparagraphs (1) through (5) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each Subcontractor or seller.

10. The City hereby represents that it possesses good and clear title to all lands involved in this project, and that it will defend any suit brought against either party which involves title, ownership, or specific rights, including appurtenant riparian rights, of any lands connected with or affected by this project.

11. It is agreed by and between the parties hereto that the facilities constructed under this Agreement shall not be wholly or partially conveyed, either in fee or otherwise or leased for a term of years or for any other period, nor shall there be any whole or partial transfer of the title, ownership, or right of maintenance or control by the City except with the written approval and consent of the Department.

12. Any failure by the City to abide by any of the conditions, promises, covenants, agreements, or like undertakings contained in this Agreement, shall constitute a material breach of this Agreement and shall entitle the Department to damages. As said damages, the Department shall be offered the following options:

(a) To purchase said facilities and the right of access thereto over City property at the existing value of said facilities, less any financial contribution made by the Department, said value to be determined in the manner outlined hereafter;

Before any exercise of these options shall be made by the Department, the value of the facilities shall be determined by three competent appraisers; one to be selected by the City, one to be selected by the Department, and the third to be selected by the first two appraisers appointed. The total fees of these appraisers, including expenses, shall be equally shared by the Department and the City. The appraisal shall be limited to the value of the facilities for the construction, repair, or rehabilitation of which the facilities are located. No value shall be assigned to the right of access to the facilities over City property. The Department shall have ninety (90) days from the date of receipt of the appraisals within which to exercise its option. Should the Department fail to exercise the option within said period, the City shall pay to the Department a sum equal to the total financial contribution made by the Department towards the construction or maintenance of the facilities.

(b) To accept from the City a sum equal to the total financial contribution made by the Department towards the construction or maintenance of the facilities.

13. This Agreement shall not be effective until the State funds herein provided for are appropriated by the Michigan Legislature and their release is approved by the Administrative Board of the State of Michigan.

14. The rights of the Department under this Agreement shall continue in perpetuity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and date first above written.

WITNESSES:

Dail A. Kunderger

Paul R. Peterson  
John A. [Signature]

CITY OF MUSKEGON

By:

Stephen J. Warmington

Title: Mayor

MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES

By:

Lowen Schuett  
Lowen Schuett, Acting Chief  
Parks and Recreation Bureau

## RESOLUTION

Upon motion made by Vice Mayor Larson, seconded by  
Commissioner Gawron the following Resolution was adopted:

"RESOLVED, that the City of Muskegon, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the City does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate the sum of One Million dollars (\$1,000,000.00) to match the One Million dollars (\$1,000,000.00) State grant authorized by the Department.
2. To maintain satisfactory financial accounts, documents, and records and to make them available to the Department for auditing at reasonable times.
3. To construct the facility and provide such funds, services, and materials as may be necessary to satisfy the terms of the said Agreement.
4. To establish and appoint the City of Muskegon, to regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
5. To enforce within the confines of the City all State statutes and local ordinances pertaining to marine safety and to enforce statutes of the State of Michigan within the confines of the City pertaining to the licensing of watercraft. Watercraft not fully complying with the laws of the State of Michigan relative to licensing shall not be permitted to use the said facility until full compliance with such laws has been made.
6. To comply with any and all terms of the said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution."

The following aye votes were recorded: 7

The following nay votes were recorded: 0

STATE OF MICHIGAN     )  
                                  )     §  
COUNTY OF MUSKEGON    )

I, Gail A. Kunderger, Clerk of the City of Muskegon, Michigan, do hereby certify that the above is true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources which Resolution was adopted by the City Board at a meeting held June 8, 2004.

Gail A. Kunderger  
City Clerk

Dated: June 8, 2004

**Date: May 25, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Gail A. Kunding, City Clerk**  
**RE: Liquor License Request**  
**Polly Anna's Whole Foods**  
**1848 E. Sherman Blvd., Suite O**

---

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Polly Anna's Whole Foods of 1848 E. Sherman Blvd. for a new SDM licensed business.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

# Muskegon Police Department

*Anthony L. Kleibecker*

*Chief of Police*



---

980 Jefferson Street P.O. Box 536 Muskegon Michigan 49443-0536  
(231) 724-6750 (231) 722-5140 *fax*  
[www.muskegonpolice.com](http://www.muskegonpolice.com)

February 6, 2004

To: City Commission through the City Manager

From: *A. L. Kleibecker*  
Anthony L. Kleibecker, Chief of Police

Re: Liquor License Request (New) – 1848 E. Sherman Blvd, Suite O

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation of applicant Polly Wilson of 6627 Second St. in Holton, MI.

Ms. Wilson is requesting a new SDM license for a business – Polly Anna's Whole Foods – located at 1848 E. Sherman Blvd, Suite O, which is in a small cluster of stores just east of the Target store. Ms. Wilson does not have prior experience in owning an alcohol-serving establishment but she has been made aware of the Muskegon Police Department's position on enforcing local alcohol-related laws and ordinances.

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

ALK/dl

To: Chief Tony Kleibecker

From: Det. Kurt Dykman

Date: 02-05-04

Re: Liquor License Request

Chief Kleibecker,

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation from applicant Polly Anna Wilson of 6627 Second Street, Holton, MI. 49425.

Polly Wilson is requesting a new SDM license for her business, Polly Anna's Whole Foods, located at 1848 E. Sherman, Suite O, Muskegon MI, 49444. Mrs. Wilson has had no experience in the alcohol service industry but has been made aware of the Muskegon Police Departments position on enforcing local alcohol laws and ordinances.

A check of MPD records and Criminal History showed no reason to deny this request.

Respectfully submitted,



Det. Kurt Dykman

data/common/Cuti

RECEIVED  
FEB 06 2004  
MUSKEGON POLICE DEPT.  
CHIEF of POLICE

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
LIQUOR CONTROL COMMISSION

#238478

**RESOLUTION**

2004-55(b)

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

called to order by Mayor Warmington on June 8, 2004 at 5:30 P.M.

The following resolution was offered:

Moved by Commissioner Spataro and supported by Vice Mayor Larson

**That the request from** Polly Anna Wilson, 1848 E. Sherman, Suite O, Muskegon, MI 49444, Muskegon County, for a new SDM License

be considered for Approval  
(Approval or Disapproval)

**APPROVAL**

**DISAPPROVAL**

Yeas: 7

Yeas: \_\_\_\_\_

Nays: 0

Nays: \_\_\_\_\_

Absent: 0

Absent: \_\_\_\_\_

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

Recommended for issuance  
(Recommended or not Recommended)

State of Michigan \_\_\_\_\_)

§

County of Muskegon \_\_\_\_\_)

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

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

meeting held on June 8, 2004.  
(Date)

SEAL

(Signed) Gail A. Kunderger  
(Township, City or Village Clerk)  
Gail A. Kunderger, City Clerk  
933 Terrace, Muskegon, MI 49440  
(Mailing address of Township, City or Village)



STATE OF MICHIGAN  
**LIQUOR CONTROL COMMISSION**  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
DAVID C. HOLLISTER, DIRECTOR

**Liquor Control Commission**  
7150 Harris Drive  
P.O. Box 30005  
Lansing, Michigan 48909-7505  
(517) 322-1345  
Fax: (517) 322-6137

*mailed 1-30-04*  
*AA*

**POLICE INVESTIGATION REQUEST**

(Authorized by MCL 436.1(4))

January 23, 2004

Request ID#: 238478

Muskegon Police Department  
Attn: Chief of Police  
980 Jefferson Street, PO Box 536  
Muskegon, MI 49443-0536  
Chief Law Enforcement Officer

**Applicant:** Polly Anna Wilson, requests a new SDM licensed business, to be located at 1848 E. Sherman Suite 0, Muskegon, MI 49444 in Muskegon County.

Please make an investigation of this application. If you do not believe that the applicants are qualified for licensing, give your reasons in detail. Complete the Police Inspection Report on Liquor License Request, LC-1800, or for Detroit police, the Detroit Police Investigation of License Request, LC-1802. If there is not enough room on the front of the form, you may use the back.

Forward your report and recommendations of the applicant to the Licensing Division.

- (1) Please include fingerprint card(s) and \$30.00 for each card, and mail to the Michigan Liquor Control Commission.

If you have any questions, contact the Licensing Division at (517) 322-1400.

sr

# LIQUOR LICENSE REVIEW FORM

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☒ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Fire/Inspection Services Compliance ☐ Remaining Defects \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Department Signature B. L. Kleiber 2-6-04

Gail A. Kundinger, City Clerk  
Liquor License Coordinator



STATE OF MICHIGAN  
**LIQUOR CONTROL COMMISSION**  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
DAVID C. HOLLISTER, DIRECTOR

**Liquor Control Commission**  
7150 Harris Drive  
P.O. Box 30005  
Lansing, Michigan 48909-7505  
(517) 322-1345  
Fax: (517) 322-6137

**LOCAL GOVERNMENT 15-DAY NOTICE**

[Authorized by MAC 436.1105 (2d)(3)]

January 23, 2004

Request ID: 238478

Muskegon City Council  
Attn: Clerk  
933 Terrace Street  
PO Box 536  
Muskegon, MI 49443-0536

The Liquor Control Commission has received an application from: Polly Anna Wilson, requesting a new SDM licensed business, to be located at 1848 E. Sherman Suite 0, Muskegon, MI 49444 in Muskegon County.

Specially Designated Merchant (SDM) licenses permit the sale of beer and wine for consumption off the premises only. Specially Designated Distributor (SDD) licenses permit the sale of alcoholic liquor, other than beer and wine under 21 per cent alcohol by volume, for consumption off the premises only.

For your information, part of the investigation of the application is conducted by the local law enforcement agency and investigative forms will be released to them either in person or by mail.

Although local governing body approval is not required by the Michigan Liquor Control Act for off-premise licenses, the local governing body, or its designee, may notify the Commission within 15 days of receipt of this letter if the applicant location will not be in compliance with all appropriate state and local building, plumbing, zoning, fire, sanitation and health laws and ordinances, or if the applicant is considered ineligible due to other factors.

All conditions of non-compliance must be outlined in detail, indicating the laws and ordinances applicable in this case, with a copy of the law and/or ordinance submitted with notification.

**PLEASE RETURN YOUR RESPONSE TO:**

Michigan Liquor Control Commission  
Licensing Division  
P.O. Box 30005  
Lansing, Michigan 48909-7505

sr

# LIQUOR LICENSE REVIEW FORM

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☐ Denied ☐ No Action Needed ☐

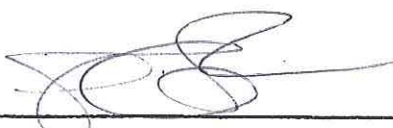
Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☒ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Fire/Inspection Services Compliance ☐ Remaining Defects \_\_\_\_\_

Department Signature  1/10/04

Gail A. Kundinger, City Clerk  
Liquor License Coordinator

# LIQUOR LICENSE REVIEW FORM

RECEIVED  
JAN 26 2004  
CLERK'S DEPARTMENT

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☒ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Fire/Inspection Compliance ☐ Remaining Defects \_\_\_\_\_  
Services \_\_\_\_\_  
\_\_\_\_\_

Department Signature Rita L. Carter

Gail A. Kundinger, City Clerk  
Liquor License Coordinator

# LIQUOR LICENSE REVIEW FORM

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: not registered

Fire/Inspection Services Compliance ☐ Remaining Defects \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Department Signature \_\_\_\_\_

Gail A. Kundinger, City Clerk  
Liquor License Coordinator

OK  
6-1-09  
JP

# LIQUOR LICENSE REVIEW FORM

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Fire/Inspection Services Compliance ☐ Remaining Defects Request

desired. Owner shall  
schedule fire inspection  
before decision is made.

OK per  
B. Grabinski  
6-1-04  
2P

Department Signature Margie McIntyre

Gail A. Kundering, City Clerk  
Liquor License Coordinator

# LIQUOR LICENSE REVIEW FORM

Business Name: \_\_\_\_\_

AKA Business Name (if applicable): \_\_\_\_\_

Operator/Manager's Name: Polly Anna Wilson

Business Address: 1848 E Sherman Suite 0

## Reason for Review:

New License ☒ <sup>SOM</sup> Transfer of Ownership ☐ Dance Permit ☐

Drop/Add Name on License ☐ Transfer Location ☐

Drop/Add Stockholder Name ☐ New Entertainment Permit ☐

Other \_\_\_\_\_

Deadline for receipt of all information: \_\_\_\_\_

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Treasurer Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: \_\_\_\_\_

Fire/Inspection Services Compliance ☐ Remaining Defects Currently have

An outstanding issue w/  
the use of an extension cord.  
Must correct before approval  
will be given.

Department Signature Robert B. Shabinski 1/26/04

Gail A. Kundinger, City Clerk  
Liquor License Coordinator

OK per  
B. Shabinski  
6-1-04  
JH



STATE OF MICHIGAN  
**LIQUOR CONTROL COMMISSION**  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
DAVID C. HOLLISTER, DIRECTOR

**Liquor Control Commission**  
7150 Harris Drive  
P.O. Box 30005  
Lansing, Michigan 48909-7505  
(517) 322-1345  
Fax: (517) 322-6137

**LOCAL GOVERNMENT 15-DAY NOTICE**

[Authorized by MAC 436.1105 (2d)(3)]

January 23, 2004

Request ID: 238478

Muskegon City Council  
Attn: Clerk  
933 Terrace Street  
PO Box 536  
Muskegon, MI 49443-0536

The Liquor Control Commission has received an application from: Polly Anna Wilson, requesting a new SDM licensed business, to be located at 1848 E. Sherman Suite 0, Muskegon, MI 49444 in Muskegon County.

Specially Designated Merchant (SDM) licenses permit the sale of beer and wine for consumption off the premises only. Specially Designated Distributor (SDD) licenses permit the sale of alcoholic liquor, other than beer and wine under 21 per cent alcohol by volume, for consumption off the premises only.

For your information, part of the investigation of the application is conducted by the local law enforcement agency and investigative forms will be released to them either in person or by mail.

Although local governing body approval is not required by the Michigan Liquor Control Act for off-premise licenses, the local governing body, or its designee, may notify the Commission within 15 days of receipt of this letter if the applicant location will not be in compliance with all appropriate state and local building, plumbing, zoning, fire, sanitation and health laws and ordinances, or if the applicant is considered ineligible due to other factors.

All conditions of non-compliance must be outlined in detail, indicating the laws and ordinances applicable in this case, with a copy of the law and/or ordinance submitted with notification.

**PLEASE RETURN YOUR RESPONSE TO:**

Michigan Liquor Control Commission  
Licensing Division  
P.O. Box 30005  
Lansing, Michigan 48909-7505

sr

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

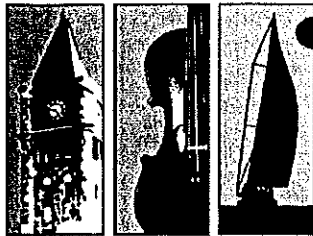
Public Works  
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FAX (231)722-4188

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

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

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

# MUSKEGON



West Michigan's Shoreline City  
[www.shorelinecity.com](http://www.shorelinecity.com)

April 1, 2004

Polly Anna Wilson  
6627 Second Street  
Holton, MI 49425

Dear Ms. Wilson:

I have received a letter from the Liquor Control Commission reference your request for a new SDM License at 1848 E. Sherman, Suite O. This request has been sent to City Hall departments for their approval. Three of the departments have not approved your request. The business is not registered. Please fill out the enclosed application and return it with \$30 to the Clerk's Office. An inspection of the building is required by the Fire Marshal. Please contact the Fire Department at 724-6792 to set up the inspection. The Inspection Department stated there is an issue with the use of an extension cord. Please contact the Inspection Department at 724-6715.

This request will then be presented to the City Commission for their recommendation. If you have any questions, please contact me at 724-6915.

Thank you,

A handwritten signature in cursive script that reads "Linda Potter".

Linda Potter, CMC  
Deputy Clerk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Police Department  
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FAX (231)722-5140

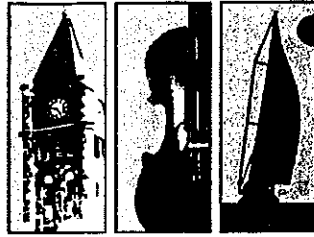
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FAX (231)755-5290

# MUSKEGON



West Michigan's Shoreline City  
[www.shorelinecity.com](http://www.shorelinecity.com)

June 3, 2004

Ms. Polly Wilson  
1848 E. Sherman, Suite O  
Muskegon, MI 49444

Dear Ms. Wilson:

This letter is to inform you that your request for a new SDM License will be presented to the City Commission on June 8, 2004. This meeting begins at 5:30 p.m. and is located in the City Commission Chambers, 933 Terrace, Muskegon, MI.

This request has also been sent to the East Muskegon Neighborhood Association for their comments. It is Commission practice to let the Neighborhood Association know of any liquor license requests that are located within their boundaries. This allows for comments from the people who live there and not just from the owners of the business' who are located there.

Sincerely,

A handwritten signature in cursive script that reads "Linda Potter".

Linda Potter  
Deputy Clerk

June 3, 2004

Ms. Jacqueline Vines, President  
East Muskegon Neighborhood Alliance  
2174 Continental  
Muskegon, MI 49442

Dear Ms. Vines:

We have received a letter from the Liquor Control Commission reference a request from Polly Anna's Whole Foods, located at 1848 E. Sherman, Suite O, for a new SDM license. A SDM license permits the sale of beer and wine for consumption off the premises. On Tuesday, June 8, 2004, the City Commission will review this request and determine whether or not it should be recommended for approval.

You are being sent this notice because the City Commission would like to know how the Neighborhood Association feels and would appreciate any comments that they may have. You may send these comments to 933 Terrace, Muskegon, MI 49440 or attend the City Commission Meeting on June 8, 2004, at 5:30 p.m. in the Commission Chambers.

If you have any questions, please feel free to contact me at 724-6705.

Sincerely,

Linda Potter  
Deputy Clerk

**POLLY ANNA'S WHOLE FOODS**  
1848 E. SHERMAN BLVD.  
MUSKEGON, MI 49444

9-91 743  
720  
884482470

1020

Muskegon P.W. DATE 6-4-04

PAY TO THE ORDER OF City of Michigan \$ 200<sup>00</sup>

Two Hundred & 00/100 DOLLARS

**National City.**  
National City Bank of Michigan/Illinois  
Kalamazoo, Michigan

MEMO \_\_\_\_\_

Polly A. Wilson MP

⑆072000915⑆ 884482470⑈ 1020

**POLLY ANNA'S WHOLE FOODS**  
1848 E. SHERMAN BLVD.  
MUSKEGON, MI 49444

9-91 743  
720  
884482470

1021

DATE 6-4-04

PAY TO THE ORDER OF State of Michigan \$ 30<sup>00</sup>

Thirty & 00/100 DOLLARS

**National City.**  
National City Bank of Michigan/Illinois  
Kalamazoo, Michigan

MEMO \_\_\_\_\_

Polly A. Wilson MP

⑆072000915⑆ 884482470⑈ 1021

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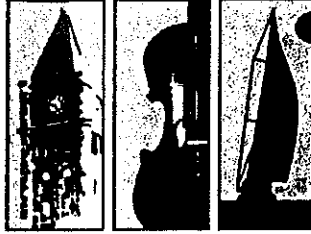
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# MUSKEGON



West Michigan's Shoreline City  
[www.shorelinecity.com](http://www.shorelinecity.com)

June 9, 2004

Liquor Control Commission  
7150 Harris  
PO Box 30005  
Lansing, MI 48909-7505

REF: #238478  
Polly Anna Wilson  
1848 E. Sherman, Suite O  
Muskegon, MI 49444

To Whom It May Concern:

Enclosed is the Resolution, form LC-1800, print cards and check for Polly Anna Wilson that was recommended for approval at the June 8, 2004, City Commission Meeting.

Please do not hesitate to call me at (231) 724-6705 if you have any questions.

Sincerely,

Linda Potter  
Deputy Clerk

Enc.

**Date:** June 8, 2004  
**To:** Honorable Mayor and City Commissioners  
**From:** Public Works  
**RE:** Illicit Discharge and Connection Ordinance

---

**SUMMARY OF REQUEST:**

The City's permit (Certificate of Coverage) to discharge storm water to waters of the state requires the adoption of an ordinance to prohibit illicit connections of non-storm water to the municipal storm water collection system. The attached ordinance is recommended by our consultant, FTCH, and has been reviewed and approved as corrected by the City Attorney.

**FINANCIAL IMPACT:**

None.

**BUDGET ACTION REQUIRED:**

None. Expenses are budgeted under the Storm Water Budget.

**STAFF RECOMMENDATION:**

To approve the adoption of the Illicit Discharge and Connection Ordinance.

CITY OF MUSKEGON  
Ordinance No. 2135

An ordinance adopting the Illicit Discharge and Connection ordinance of the City of Muskegon

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 26 of the Code of Ordinances is amended to read as follows:

**ARTICLE VII    GENERAL**

**SECTION 26-300    STATUTORY AUTHORITY AND TITLE**

The City of Muskegon shall administer, implement, and enforce the provisions of the ordinance. Any powers granted, or duties imposed, upon the City of Muskegon may be delegated in writing by the City Manager of the City of Muskegon to persons or entities acting in the beneficial interest of, or in the employ of the City of Muskegon.

**SECTION 26-301    FINDINGS**

The City of Muskegon finds that:

- (1) Illicit discharges contain pollutants that will significantly degrade the waterbodies and water resources of the City of Muskegon, thus threatening the health, safety, and welfare of the citizenry.
- (2) Illicit discharges enter the storm water drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets).
- (3) Establishing the measures for controlling illicit discharges and connections contained in this Ordinance and implementing the same will address many of the deleterious effects of illicit discharges.
- (4) Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance.

## **SECTION 26-302    PURPOSE**

It is the purpose of this Ordinance to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

- (1) To regulate the contribution of pollutants to the storm water drainage system and waterbodies by storm water discharges by any user.
- (2) To prohibit illicit discharges and connections to the storm water drainage system and waterbodies.
- (3) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.
- (4) To provide appropriate remedies for failure to comply with this Ordinance.

## **SECTION 26-303    APPLICABILITY AND GENERAL PROVISIONS**

This Ordinance shall apply to all discharges entering the storm water drainage system and waterbodies generated on any developed and undeveloped lands.

## **SECTION 26-304    DEFINITIONS**

For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context in which they are used specifically indicates otherwise:

*Authorized Enforcement Agency:* The City of Muskegon and/or any persons or agencies designated to act as the Authorized Enforcement Agency by the City of Muskegon.

*Best Management Practices (BMPs):* Structural devices or nonstructural practices that are designed to prevent pollutants from entering storm water flows, to direct the flow of storm water, or to treat polluted storm water flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria that accomplish the purposes of this Ordinance (including, but not limited to, minimizing storm water runoff and preventing the discharge of pollutants into storm water) shall be as determined by the City of Muskegon Engineer.

*Clean Water Act:* The Federal Water Pollution Control Act, 33 USC Section 1251 et seq., as amended, and the applicable regulations promulgated thereunder.

*Discharge:* means the introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a storm water drainage system or water body.

*Discharger:* Any person who directly or indirectly discharges storm water from any premises. Discharger also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this Ordinance.

*Drain:* Any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive storm water or groundwater, either on a temporary or permanent basis.

*Drainage:* The collection, conveyance, or discharge of groundwater and/or surface water.

*Drainageway:* A drain, water body, or floodplain.

*EPA:* The U.S. Environmental Protection Agency (EPA).

*Floodplain:* The area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water, that has been or may be covered by floodwater.

*Hazardous Materials:* Any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

*Illicit Connection:* Any method, means, or conduit for conveying an illicit discharge into a water body or a storm water drainage system.

*Illicit Discharge:* Any discharge to a water body or a storm water drainage system that does not consist entirely of storm water, that is not authorized by the terms of an NPDES permit, or that is not an authorized discharge as defined by this Ordinance.

*MDEQ:* Michigan Department of Environmental Quality.

*National Pollutant Discharge Elimination System (NPDES) Permit:* A permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorized the discharge of pollutants to waters of the United States.

*Non-Storm Water Discharge:* Any discharge to the storm water drainage system or a water body that is not composed entirely of storm water.

*Person:* An individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.

*Pollutant:* The term pollutant includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment,

incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. Pollutant also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor.

*Premises:* Any building, structure, lot, parcel of land, or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

*Property Owner:* Any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.

*State of Michigan Water Quality Standards:* All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.

*Storm Water Drainage System:* Storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying storm water.

*Storm Water Pollution Prevention Plan:* A document, that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, a storm water drainage system, and/or a water body to the maximum extent practicable.

*Storm Water Runoff (or Storm Water):* The runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process.

*Toxic Material:* Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.

*Wastewater:* Any water or other liquid, other than uncontaminated storm water, discharged from a premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.

*Water Body:* A river, lake, stream, creek, or other watercourse or wetlands.

## **Section 26-305 PROHIBITED DISCHARGES**

- (1) It is unlawful for any person to discharge, or cause to be discharged, to a storm water drainage system or water body any substance or material, including, but not limited to,

pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a storm water drainage system or water body.

- (2) Any person discharging storm water shall effectively prevent pollutants from being discharged with the storm water, except in accordance with BMPs.
- (3) The Authorized Enforcement Agency is authorized to require dischargers to implement pollution prevention measures, using Storm Water Pollution Prevention Plans and BMPs, as determined necessary by the Authorized Enforcement Agency to prevent or reduce the discharge of pollutants to a storm water drainage system or water body.
- (4) The discharge prohibitions of this section shall not apply to any non-storm water discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm water drainage system.

#### **SECTION 26-306 PROHIBITED ILLICIT CONNECTIONS**

- (1) It is unlawful for any person to construct, use, maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.
- (2) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Ordinance, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

#### **SECTION 26-307 AUTHORIZED DISCHARGES**

The following non-storm water discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs:

- (1) Water supply line flushing.
- (2) Landscape irrigation runoff.
- (3) Diverted stream flows.
- (4) Rising groundwater.
- (5) Uncontaminated groundwater infiltration to storm drains.
- (6) Uncontaminated pumped groundwater.

- (7) Discharges from portable water sources.
- (8) Foundation drains.
- (9) Air conditioning condensate.
- (10) Irrigation water.
- (11) Springs.
- (12) Water from crawl space pumps.
- (13) Footing drains and basement sump pumps.
- (14) Lawn watering runoff.
- (15) Waters from non-commercial car washing.
- (16) Flows from riparian habitats and wetlands.
- (17) Residential swimming pool water and other dechlorinated swimming pool water, provided that any filter backwash water that is present is treated.
- (18) Residual street wash water.
- (19) Discharges or flows from emergency fire fighting activities.
- (20) Discharges specifically authorized in writing by the Authorized Enforcement Agency as being necessary to protect public health, welfare, and safety or the environment.

#### **SECTION 26-308 STORAGE OF HAZARDOUS OR TOXIC MATERIALS IN DRAINAGEWAY**

Except as permitted by law, it shall be unlawful for any person to store or stockpile, within a drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a storm water drainage system or water body.

#### **SECTION 26-309 INSPECTION AND SAMPLING**

The Authorized Enforcement Agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of this Ordinance. Upon request, the discharger shall allow properly identified representatives of the Authorized Enforcement Agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing,

televising pipes, sampling, and excavation. The Authorized Enforcement Agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection.

#### **SECTION 26-310 STORM WATER MONITORING FACILITIES**

If directed in writing to do so by the Authorized Enforcement Agency, a discharger of storm water runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or devices for the monitoring of storm water runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or a storm water drainage system, as specified by the Authorized Enforcement Agency. The Authorized Enforcement Agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.

#### **SECTION 26-311 ACCIDENTAL DISCHARGES**

Any discharger who accidentally discharges into a storm water drainage system or a water body any substance other than storm water or an authorized discharge shall immediately notify the Authorized Enforcement Agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the Authorized Enforcement Agency within 5 days. The written report shall specify all of the following:

- (1) The composition of the discharge and the cause thereof.
- (2) The exact date, time, and estimated volume of the discharge.
- (3) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.
- (4) The name(s) and telephone number(s) of the individual(s) making the report, and (if different) the individual(s) who may be contacted for additional information regarding the discharge.

#### **SECTION 26-312 RECORD KEEPING REQUIREMENT**

- (1) Any person that violates any requirement of this Ordinance or that is subject to monitoring under this Ordinance shall retain and preserve for no less than three years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all

summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or storm water runoff from any premises connected with the violation or subject to monitoring.

- (2) Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this Ordinance, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this Ordinance, or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Ordinance, or in any other correspondence or communication, written or oral, with the Authorized Enforcement Agency regarding matters regulated by this Ordinance; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this Ordinance; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

#### **SECTION 26-313    SANCTIONS FOR VIOLATION**

- (1) A person who violates any provision of this Ordinance upon conviction shall be guilty of a misdemeanor punishable by a fine of \$500 per violation or imprisonment for up to 90 days, or both.
- (2) Authorized Local Official. Notwithstanding any other provision of the City of Muskegon's laws, ordinances, and regulations to the contrary, the Director of the Department of Public Works is designated as the authorized local officials to issue citations for violations of this Ordinance.
- (3) Any person who aids or abets another person in a violation of this Ordinance shall be subject to the sanctions provided in this section.

#### **SECTION 26-314    FAILURE TO COMPLY; COMPLETION**

The Authorized Enforcement Agency is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this Ordinance or damage or impairment to the storm water drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the Authorized Enforcement Agency under other sections of this Ordinance.

#### **SECTION 26-315    EMERGENCY MEASURES**

If emergency measures are necessary to respond to a nuisance; to protect public safety, health, and welfare; and/or to prevent loss of life, injury, or damage to property, the Authorized Enforcement Agency is authorized to carry out or arrange for all such emergency measures.

Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this Ordinance, and shall promptly reimburse the City of Muskegon for all of such costs.

#### **SECTION 26-316 COST RECOVERY FOR DAMAGE TO STORM WATER DRAINAGE SYSTEM**

Any person who discharges to a storm water drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this Ordinance, produces a deposit or obstruction or otherwise damages or impairs a storm water drainage system, or causes or contributes to a violation of any federal, state, or local law governing the City of Muskegon, shall be liable to and shall fully reimburse the City of Muskegon for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the City of Muskegon as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The costs that must be reimbursed to the City of Muskegon shall include, but shall not be limited to, all of the following:

- (1) All costs incurred by the City of Muskegon in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.
- (2) All costs to the City of Muskegon of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence, or noncompliance.
- (3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the City of Muskegon, or any City of Muskegon representative, by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance.
- (4) The full value of any City of Muskegon staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the City of Muskegon legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this Ordinance.

#### **SECTION 26-317 COLLECTION OF COSTS; LIEN**

- (1) Costs incurred by the City of Muskegon pursuant to this chapter shall constitute a lien on the premises. Any such charges that are delinquent for 6 months or more may be certified annually to the City of Muskegon Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in

the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes.

#### **SECTION 26-318    SUSPENSION OF ACCESS TO THE STORM WATER DRAINAGE SYSTEM**

- (1) The Authorized Enforcement Agency may, without prior notice, suspend access to the storm water drainage system to any person or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm water drainage system or a water body. If the person fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the storm water drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the City of Muskegon in taking such steps.
- (2) Suspension due to the detection of illicit discharge. Any person discharging to the storm water drainage system in violation of this Ordinance may have their access to the system terminated, if the Authorized Enforcement Agency determines that such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the storm water drainage system to a premises terminated pursuant to this section without the prior written approval of the Authorized Enforcement Agency.

#### **SECTION 26-319    JUDICIAL RELIEF**

The authorize Enforcement Agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Ordinance or of any permit, order, notice or agreement issued or entered into under this Ordinance. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The Authorized Enforcement Agency may also seek collection of fines, penalties and any other amounts due to the City of Muskegon that a person has not paid.

#### **SECTION 26-320    CUMULATIVE REMEDIES**

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this Ordinance, or of any permit, order, notice or agreement issued, or entered into under this Ordinance, shall not preclude the imposition by the City of Muskegon, the Authorized Enforcement Agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

## **SECTION 26-321    RESPONSIBILITY TO IMPLEMENT BMPS**

The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the storm water drainage system or water body through the use of structural and nonstructural BMPs. Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system or water body. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

## **SECTION 26-322    INTERPRETATION**

Words and phrases in this Ordinance shall be construed according to their common and accepted meanings, except those words and phrases defined in Section 1.05 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

## **SECTION 26-323    CATCH-LINE HEADINGS**

The catch-line headings of the articles and sections of this Ordinance are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

This ordinance adopted:

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

Nays: None

Adoption Date: June 8, 2004

Effective Date: June 25, 2004

First Reading: June 8, 2004

Second Reading: N/A

CITY OF MUSKEGON

By Gail A. Kunderger  
Gail A. Kunderger, MMC  
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 8<sup>th</sup> day of June, 2004, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: June 8, 2004

Gail A. Kunderger  
Gail A. Kunderger, MMC  
Clerk, City of Muskegon

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

**CITY OF MUSKEGON  
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on June 8, 2004, the City Commission of the City of Muskegon adopted amendments to Chapter 26 of the Muskegon City Code by adopting an Illicit Discharge and Connection Ordinance, summarized as follows:

1. Section 26-300 articulates the statutory authority of this Ordinance and to permit the delegation in writing to persons or entities acting in the beneficial interest of, or in the employ of the City of Muskegon.
2. Section 26-301 articulates the findings that Illicit Discharges enter the system through direct and indirect connections and contain pollutants that will significantly degrade the water bodies and water resources of the City of Muskegon.
3. Section 26-302 articulates that the purpose of this Ordinance is to establish minimum storm water management requirements and controls.
4. Section 26-303 provides that this Ordinance shall apply to all Discharges entering the Storm Water Drainage System and water bodies.
5. Section 26-304 provides the definitions of Authorized Enforcement Agency, Best Management Practices (BMPs), Clean Water Act, Discharge, Discharger, Drain, Drainage, Drainageway, EPA, Floodplain, Hazardous Materials, Illicit Connection, Illicit Discharge, MDEQ, National Pollutant Discharge Elimination System (NPDES) Permit, Non-Storm Water Discharge, Person, Pollutant, Premises, Property Owner, State of Michigan Water Quality Standards, Storm Water Drainage System, Storm Water Pollution Prevention Plan, Storm Water Runoff (or Storm Water), Toxic Material, Wastewater, and Water Body.
6. Section 26-305 prohibits a Discharge of any substance or material containing any pollutants that cause or contribute to a violation of applicable Water Quality Standards, other than storm water or an authorized Discharge, unless authorized, to a Storm Water Drainage System or Water Body.
7. Section 26-306 prohibits construction, use, or maintenance of an Illicit Connection.
8. Section 26-307 authorizes certain specified Non-Storm Water Discharges.

9. Section 26-308 prohibits the storage or stockpiling, within a Drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided.
10. Section 26-309 authorizes the inspection and/or the obtaining of samples, including the right to enter property, from any Discharger's premises, as necessary, to determine compliance with the requirements of this Ordinance.
11. Section 26-310 requires certain monitoring of Storm Water Runoff, including for the inspection, sampling, and flow measurement of Discharges at the Discharger's expense.
12. Section 26-311 requires written notification, with specific information, of an accidental Discharge.
13. Section 26-312 requires recordkeeping relating to monitoring, sampling, and chemical analysis of any Discharge or Storm Water Runoff and failure to do such is a misdemeanor.
14. Section 26-313 provides that violations of this Ordinance are a misdemeanor punishable by a fine of \$500 per violation or imprisonment for up to 90 days, or both. The Director of the Department of Public Works is designated as the authorized local officials to issue citations for violations of this Ordinance.
15. Section 26-314 permits the Authorized Enforcement Agency to correct any violation of this Ordinance, damage or impairment to the Storm Water Drainage System, and to bill the Person causing the violation or Discharge for the costs of the work to be reimbursed, in addition to fees, amounts or other costs and expenses.
16. Section 26-315 permits emergency measures, if necessary, and that property owners shall be responsible for the cost of such measures.
17. Section 26-316 establishes the basis for recovery of all expenses, costs, losses or damages (direct or indirect) payable or incurred by the City of Muskegon as a result of any such Discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance.
18. Section 26-317 provides that costs incurred by the City of Muskegon pursuant to this chapter shall constitute a lien on the premises and collected in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes.

19. Section 26-318 permits the Authorized Enforcement Agency to suspend access and take actions as necessary to terminate access to the Storm Water Drainage System.
20. Section 26-319 permits the Authorized Enforcement Agency to institute legal proceedings in a court of competent jurisdiction.
21. Section 26-320 permits cumulative remedies.
22. Section 26-321 requires the owner or operator of a premises used for commercial or industrial purposes to provide reasonable protection from an accidental Discharge of prohibited materials or other wastes into the Storm Water Drainage System or Water Body through the use of structural and nonstructural BMPs.
23. Section 26-322 aids in the interpretation of words and phrases in this Ordinance.
24. Section 26-323 provides that catch-line headings of the articles and sections of this Ordinance are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

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

This Ordinance amendment is effective ten (10) days from the date of this publication.

Published: 6-15, 2004

CITY OF MUSKEGON

By \_\_\_\_\_  
Gail A. Kunding, MMC  
City Clerk

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

**Commission Meeting Date: June 1, 2004**

**Date: June 1, 2004**  
**To: Honorable Mayor & City Commission**  
**From: Community and Neighborhood Services**  
**Department**  
**RE: Purchase of 510 Creston**

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SUMMARY OF REQUEST: To approve the purchase of the property located at 510 Creston (City of Muskegon Urban Renewal Plat number 2 Lot 349 from the U.S. Department of Housing and Urban Development for the amount of \$16,500. If approved, CNS will solicit bids to rehabilitate the structure at 510 Creston and later sell the totally rehabilitated home to a qualified low/moderate-income family. Which will continue the City's neighborhood revitalization efforts by returning once blighted homes to the tax roll and eliminating their blighting influence on their specific neighborhood.

FINANCIAL IMPACT: Funding for the purchase and rehabilitation will be deducted from the City's 2002 HOME funding.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

COMMITTEE RECOMMENDATION: None



510

**HUD HOME FOR SALE**

1(888) 622-7361

CAUTION

CAUTION

**Commission Meeting Date: June 8, 2004**

**Date: June 2, 2004**  
**To: Honorable Mayor & City Commission**  
**From: Community and Neighborhood Services**  
**Department**  
**RE: Approval of 2004 – 2005 Subrecipient and**  
**Community Housing Development Organization**  
**(CHDO) Agreements**

---

SUMMARY OF REQUEST: To direct the Mayor and City Clerk to sign all of the 2004-2005 approved agreements for the City's subrecipients and CHDO's. The City Commission approved the funding for each of the nonprofits last spring during the City's Consolidated Planning process.

After the Mayor and Clerk sign the contracts, the CNS office will retain one copy of our files and a copy will be supplied to the appropriate nonprofit for their records.

FINANCIAL IMPACT: Funding will be allocated from the 2004-2005 CDBG and HOME programs.

BUDGET ACTION REQUIRED: None. The City Commission made budgeting decision last Spring.

STAFF RECOMMENDATION: To direct Mayor and Clerk to sign agreements.

COMMITTEE RECOMMENDATION: None needed.

**2004-2005 Subrecipient/CHDO Awards**

|                                         |              |
|-----------------------------------------|--------------|
| Muskegon Community Health Project       | \$ 7,000.00  |
| West Michigan Veterans                  | \$ 5,000.00  |
| Pioneer Resources                       | \$ 2,500.00  |
| HealthCare                              | \$ 6,000.00  |
| American Red Cross                      | \$ 5,000.00  |
| Volunteer Muskegon-Mapping              | \$ 3,333.33  |
| Volunteer Muskegon-KKIS                 | \$ 3,333.33  |
| Legal Aid of Western Michigan           | \$ 9,000.00  |
| Family Services Center, Inc             | \$ 5,833.34  |
| Lakeshore Fair Housing Alliance         | \$ 7,000.00  |
| Muskegon Public Schools                 | \$ 5,000.00  |
| <i>Mainstreet</i>                       | \$ 2,500.00  |
| Muskegon Retirement Apartment Inc       | \$ 5,000.00  |
| <i>Neighborhood Investment Corp</i>     | \$ 80,000.00 |
| Habitat For Humanity                    | \$ 47,000.00 |
| Trinity Village Non-Profit Housing Corp | \$ 22,000.00 |

## **SUBRECIPIENT AGREEMENT / 2004-2005**

This SUBRECIPIENT made this 1<sup>st</sup> day of June, 2004, by and between the City of Muskegon, Michigan, A Municipal Corporation, (hereinafter "Recipient") and \_\_\_\_\_ whose offices are located at \_\_\_\_\_, MI (hereinafter "Subrecipient"),

WITNESSETH:

**WHEREAS**, Subrecipient will receive Community Development Block Grant (CDBG) funds from the Recipient, in the amount of \$ \_\_\_\_\_, to be used for the following:

**WHEREAS**, the parties wish to set forth the conditions on which the funds are to be made available;

**NOW THEREFORE**, in consideration of the covenants herein contained, the parties do mutually agree as follow:

### **I. GENERAL CONDITIONS**

1. Services to be delivered are eligible activities as defined in Section 570.200 and 570.201 of the CDBG Administrative Regulations (CFR 570).
2. The Subrecipient certifies that the service is either:
  - a. a new service or
  - b. a quantifiable increase in the level of a service above the level which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the twelve (12) calendar months prior to submission of the proposal, or
  - c. a continuation of a service that would otherwise be decreased due to events beyond the control of the Subrecipient.
3. The Subrecipient is incorporated as a non-profit organization in good standing under Michigan Law.
4. The Subrecipient warrants that a current copy of its charter (if applicable), Articles of Incorporation and By-Laws are on file with the Department of Community and Neighborhood Services. The Subrecipient shall also keep

a current list of its board members, its officers and their addresses on file with the Community & Neighborhood Services Department.

5. By resolution, the Subrecipient's Board of Directors shall certify to the City a responsible contact person, who shall be considered their representative in all matters relating to this Agreement for communication and administrative purposes.

Until further written notice from the Subrecipient, said contact person shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **II. PERSONNEL**

1. The Subrecipient shall maintain direct control of all personnel employed by it and to provide the necessary training and supervision of its employees in carrying out contracted programs. However, implementation of the "project" must meet the requirement and approval of Community and Neighborhood Services.
2. In all work made possible by or resulting from this agreement, affirmative action will be taken to insure that low income persons, particularly minorities and women, are given maximum opportunity for training and employment; and that minority business concerns located in the area, to the greatest extent feasible, are awarded sub-contracts when permitted by this Agreement (Section 3, CDF 135).
3. Incorporated by reference are Title VI of the Civil Rights Act of 1964, Executive Order 11246 and OMB Circular A-102, Attachment O which relates to equal opportunity. Copies are available at the Community Development Office.
4. The Subrecipient (including its membership body, Board of Directors, committees, and paid and other volunteer staff) agrees that it will comply with City policies and procedures concerning equal opportunity, affirmative action, and non-discrimination in employment practices because of age, religion, race, color, national origin, sex, education association, marital status or physical limitation.

## **III. SCOPE OF SERVICES**

The Subrecipient shall provide the services specified in Attachment "A", Scope of Services, in exchange for financial compensation detailed in Attachment "B".

#### **IV. COMPENSATION AND METHOD OF PAYMENT**

1. The maximum amount which the Subrecipient may receive pursuant to this Agreement is \$\_\_\_\_\_.
2. The Subrecipient warrants that its Board of Directors has approved a budget request to provide services detailed in this Agreement (attachment "B"). The budget total of \$\_\_\_\_\_, shall remain unchanged during the year unless amended as permitted in this Agreement. The Subrecipient may not, without City Commission approval, make transfer between categories not exceeding 10% of the overall budget total, or \$2,000.00, or whichever is greater.
3. Upon approval of Subrecipient's request for payment, the Subrecipient shall be reimbursed for expenses within a maximum of twenty (20 days.)
4. To receive payments, the Subrecipient must complete and submit the following:
  - a. Request for Payment
  - b. Detailed Invoice for Actual Expenditures
  - c. Quarterly Performance Reports
5. All program income, received by the Subrecipient, (if any) shall be disbursed by the Subrecipient prior to request for payments from the Recipient. Program income resulting from the project will be handled in accordance with the requirements of 24 CFR 570.503 applicable to CDBG Recipients.
6. If at the end of the term of this Agreement there are unexpended portions of the contract amount set forth in this Agreement, the City may recapture said amount for reallocation to other purposes.
7. If Subrecipient fails to comply with terms specified in this Agreement or refused to accept and meet conditions imposed by the Department of Housing and Urban Development (HUD), the Recipient may immediately terminate payments to the Subrecipient and recover any funds it has advanced. In the event of the inability of Subrecipient to perform or complete the project, or termination of the Agreement by the City Commission, Recipient will pay only invoices for work performed or satisfactorily completed.
8. The Recipient shall not be held liable for expenditures or obligations incurred in excess of the authorized total budget, nor shall the City be held liable for expenditures or obligations for ineligible cost pursuant to Section 570.200 and 570.201 of the Housing and Community Development Act.

#### **IV. FINANCING AUDITS AND INSPECTIONS**

1. The Subrecipient shall document the costs incurred with CDBG funds with the support of properly executed payrolls, time records, invoices, contracts, vouchers, receipts, or other official documentation that shows in proper detail the nature and propriety of charges. All such documents must be clearly identifiable and readily assessable during the term of the Agreement to City and HUD officials or their authorized representative for audit and examination as often as the City may deem necessary. Additionally, the Subrecipient agrees to securely maintain such documents for a period of three (3) years after termination of this Agreement.
2. The Subrecipient is to act within thirty (30) days after the signing of this Agreement to establish a procedure for its accounting operation that will not be inconsistent with Federal Management Circular A-102, Attachment G, and can be certified auditable by the Accountant for the Community and Neighborhood Services Department. The auditable procedure shall insure that monies provided by the Community Development Block Grant program can be separately traced from other funds of the Subrecipient.
3. The Recipient shall provide the Subrecipient with a copy of any account requirements established by HUD, and the Subrecipient shall thenceforth be responsible for compliance with such requirements.
4. Program Income earned by the Service Agency during the grant period shall be retained by the Subrecipient, and in accordance with OMB Circulars A-102, A-110 and A-122 shall be:
  - a. Added to funds committed to the project by the City and the Subrecipient to be used to further eligible program objectives as defined in the scope of services of this Agreement (see Attachment A).
  - b. Deduct from the total project costs for the purposes of determining the net costs on which the Federal (CDBG) share of the cost will be based.
5. No CDBG funds shall be disbursed under this Agreement by the Subrecipient or any others contracted by the Subrecipient unless those contracted are in compliance with City and HUD requirements with regard to fiscal matter and civil rights to the extent such requirements are applicable. The Subrecipient shall provide the Recipient with a copy of such contracts.
6. The Subrecipient shall provide proof of Bonding Insurance for all employees who handle funds.

## **V. INSURANCE COVERAGE**

The Subrecipient shall indemnify, defend, and hold the Recipient, its officers, and the employees harmless with respect to any damage claim arising out of activities specified by this Agreement. This Subrecipient shall maintain for the entire period of this Agreement a valid policy of liability insurance naming the City of Muskegon (Recipient) as an insured party with limits of not less than \$300,000 per occurrence. The Subrecipient shall also maintain coverage during the Agreement period for Workers' Compensation as required by law. The Subrecipient shall submit proof of insurance and amount of coverage to the Community and Neighborhood Services office prior to receiving any funds.

## **VI. REPORTS, MONITORING AND EVALUATION**

1. The Subrecipient agrees to cooperate fully with the Community and Neighborhood Services office, City and HUD officials, Citizen Committees, or any other individuals appointed by City Commission to evaluate and monitor the requirements and performance of programs financed with CDBG funds. The Subrecipient agrees to provide to the same parties listed information and reports, oral or written, as may reasonably be required or requested during the term of this Agreement on matters relating to program activities, performance, or contract compliance.
2. The Subrecipient agrees to complete and submit to the Community and Neighborhood Services Office in a timely manner a Quarterly Performance Report.

The report forms are to be provided by the City. The Subrecipient agrees to collect and make available to the Community and Neighborhood Services Department the following information on its clients or program participants:

- a. Street (only) address of the client: (inside or outside City);
- b. Month and year of initial services;
- c. Number of services units rendered to each client served under this agreement;
- d. Age and sex of the client or participant;
- e. Whether the client or participant is the head of household;
- f. Whether client or participant is a member of a minority group (which group);
- g. Family income by family size (which will be indicated by checking an income range category);
- h. Whether client or participant head of household is handicapped;

The information is to be collected on a tabulation sheets provided by the City. The form will state that the client/participant information being collected is required in order for the Subrecipient to receive Community Development Block

Grant funds from the City of Muskegon. Client information will be submitted quarterly with the Performance Reports.

Alternate systems of collecting data required in this section can be developed in consultation with the Community and Neighborhood Services Office. The Recipient retains the final right to approve any waiver of, or amendment to, this reporting requirement.

## **VII. CONTRACT AMENDMENT**

That except as expressly provided elsewhere in this Agreement, any modifications or amendments to this Agreement may be made by mutual Agreement of the Subrecipient and the City Commission. It is expressly understood that this Agreement is subject to HUD Community Development Block Grant funding regulations. Should HUD act to make changes in regulations or suspend or terminate funding, such actions shall automatically amend this Agreement, if applicable.

## **VIII. ASSIGNABILITY**

The Subrecipient shall not assign or transfer any interest in this Agreement without consent of the City Commission.

## **IX. POLITICAL ACTIVITIES**

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activities, or to further the election or defeat of any candidate for office.

## **X. CONFLICT OF INTEREST**

No employee, officer or agent of the Recipient shall participate in the award or administration of this Agreement if a conflict of interest real or apparent, would be involved or any type of benefit financially, politically or asset wise. (i.e. obtain housing, illegal obtaining of contracts, etc.) See CFR 24.92.356 and CFR 570.611.

## **XI. CITY'S RIGHT TO ENFORCE**

1. The Community and Neighborhood Services Department may unilaterally suspend (on a temporary basis) or alter this Agreement, including the amount of funds allocated, for failure to comply with the terms and conditions of this Agreement or failure to comply with regulations for the U.S. Government, or directives of the Muskegon City Commission, some examples of which follow:
  - a. Ineffective or improper use of the Community Development Block Grant funds:

- b. Failure to submit complete and correct performance or financial reports;
  - c. Failure to provide services called for in the Scope of Services section within the time frame stated: and
  - d. If for any reason, the program cannot be completed.
2. The City Commission may unilaterally terminate this Contract for failure to comply with the terms and conditions of the Agreement, the regulations of the U.S. government, or directives of the Muskegon City Commission.
3. The Community and Neighborhood Services Department office shall provide reasonable notice to the Subrecipient before action is taken to suspend, alter or terminate this Agreement. Such notice shall include the reasons for the contemplated action and the Subrecipient shall be give a right to protest.
4. In the event this Agreement is terminated by the City Commission, the Ownership of all documents, equipment and properties acquired by CDBG or Program Income funds shall revert to the Recipient with the decision for final disposition being left to the City Commission. However, the Subrecipient shall receive just compensation for any work satisfactorily completed prior to such termination.

## **XII. PURSUIT OF ADDITIONAL RESOURCES**

The Subrecipient shall make bona fide efforts to secure funds and resources from other sources. Further, the Subrecipient shall cooperate with the Community and Neighborhood office, as requested, in its efforts to pursue additional or alternative funding. The Subrecipient shall report these efforts as part of the required Quarterly Performance Report.

## **XIII. TIME PERFORMANCE AGREEMENT TERM**

All services rendered hereunder shall be completed by May 31, 2005. This Agreement automatically terminates at that time unless specifically extended by the City Commission. All funds allocated which are unspent or encumbered for services under this Agreement shall be repaid to the City within fifteen (15) days of this date.

## **XIV. OTHER**

1. That it will comply with all requirements applicable to HUD Block Grant Subrecipients set forth in the CDBG Program Requirements contained in 24 Code of Federal Regulation Part 570. Such requirements pertain to, but are not limited to, compliance with OMB Circular A-102, reports and information, audits and inspection, unearned payment, non-discrimination, disposition of real property, and miscellaneous grant administration requirements.

2. That should the Subrecipient utilize any portion of CDBG funds for acquisition of property or relocation of individuals, families, or businesses as a result of a project involving federal financial assistance from HUD, as defined in regulations at 24CFR Part 42.79, all acquisition and/or relocation shall conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91.646), and the regulations which implement the Act (24 CFR Part 42).
3. That except with respect to the rehabilitation of residential use for less than eight families, all contractors engaged under contracts in excess of \$2000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this agreement, shall comply with HUD requirements pertaining to such Contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 2, 5, and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve the Subrecipient of its obligations, if any, to require payment of the higher rates. The Subrecipient shall require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and for such contracts in excess of \$10,000, 29n CFR 5a.3.
4. The Subrecipient agrees to abide by all other Federal requirements not highlighted in this Agreement, but included in the Community Development Block Grant regulations at the Community and Neighborhood Services Department, or other regulations subsequently supplied to the Subrecipient.
5. That should the Subrecipient funding involve construction work, the Subrecipient contractors(s) agree to allow access to the City or its representative for inspection purposes.
6. Should the Subrecipient acquire any real or personal property with funds provided under this Agreement, it will not dispose of such property through sale or otherwise without written permission of Recipient. If property is disposed of without written permission, the proceeds shall be returned to the Recipient, and Subrecipient may be required to reimburse the Recipient for the Federal portion of participation in the project, subject to requirements in the Office of Management and Budget Circular A-102, Attachment N, Property Management Stands.

## **XV. CONTRACT CLOSEOUT**

All contracts will be closed out in accordance with the procedures specified in OMB Circular A-102, Attachment L, and Portions of OMB Circulars A-110 and A-122 applicable to non-profit organizations.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year above written.

Signed In the Presence Of:

CITY OF MUSKEGON, MICHIGAN  
A Municipal Corporation

Witness \_\_\_\_\_

By: \_\_\_\_\_  
Stephen J. Warmington, Mayor

Witness \_\_\_\_\_

By: \_\_\_\_\_  
Gail Kunding, MMC City Clerk

\_\_\_\_\_  
Agency Name

Witness \_\_\_\_\_

By: \_\_\_\_\_  
It's President

Witness \_\_\_\_\_

By: \_\_\_\_\_  
It's Secretary

## ATTACHMENT "A"

### SCOPE OF SERVICES

Subrecipient Name \_\_\_\_\_

#### **SCOPE OF SERVICES**

The Scope of Services section below lists the services to be provided under the terms of the Subrecipient Agreement. This description shall establish the basis for the Community and Neighborhood Services Office assessment of actual program accomplishments.

##### **I. Location and Hours**

The Service Agency shall provide the contracted services at the following locations(s):

##### **II. Eligible Clients**

The Subrecipient shall take affirmative action to insure that the primary beneficiaries of services rendered under this Agreement are eligible CDBG clients. Eligible clients are defined as those persons of household who:

- a. Reside in the City of Muskegon and
- b. Have household incomes less than or equal to 80 percent of the median of the City.

## ATTACHMENT "A"

### SCOPE OF SERVICES

#### III. Description and Quantity of Services to be provided

Describe and number each service to be provided separately. Include the job title of the person (s) who will primarily render the service, the time span, which the service will be offered, if less than the total contract year, and how the service will be rendered.

Estimated quantity of service to be provided (number of persons to be served).

ATTACHMENT "B"

BUDGET

REVENUES

|                        |          |
|------------------------|----------|
| CDBG FUNDS             | \$ _____ |
| *Other (Specify Below) | _____    |
| Program Income         | _____    |
| TOTAL REVENUES         | \$ _____ |

Total  
Budgeted

Portion to be  
Funded by CDBG

EXPENDITURES

|                                    |          |          |
|------------------------------------|----------|----------|
| Salaries & Fringes                 | \$ _____ | \$ _____ |
| Consultant & Contract Services     | \$ _____ | \$ _____ |
| Office Supplies                    | \$ _____ | \$ _____ |
| Telephone                          | \$ _____ | \$ _____ |
| Rent & Related Expenses            | \$ _____ | \$ _____ |
| Equipment                          | \$ _____ | \$ _____ |
| Office Furniture                   | \$ _____ | \$ _____ |
| Travel                             | \$ _____ | \$ _____ |
| Specific Assistance to Individuals | \$ _____ | \$ _____ |
| Miscellaneous (Specify)            |          |          |
| _____                              | \$ _____ |          |
| _____                              | \$ _____ |          |
| _____                              | \$ _____ |          |
| TOTAL EXPENDITURES                 | \$ _____ | \$ _____ |

\*LIST OTHER REVENUE SOURCES:

|    |          |
|----|----------|
| 1. | \$ _____ |
| 2. | \$ _____ |
| 3. | \$ _____ |
| 4. | \$ _____ |
| 5. | \$ _____ |

**Date: June 8, 2004**  
**To: Honorable Mayor and City Commissioners**  
**From: Engineering**  
**RE: Seaway Industrial Park Easements**

---

#### SUMMARY OF REQUEST:

Authorize staff to record or cause the recording of three public utility easement within the area know as the Seaway Industrial Park as shown and described on the attached survey document. The easements are for existing utilities and are necessary to ensure proper documentation to establish such utilities ahead of any real estate transaction. The three easements are

- 1- A 33' for WM along the west side of parcel A for an existing 36" WM
- 2- The N.W. part of parcel A for a water & sewer service
- 3- A 50' storm sewer easement for the old Ruddiman

#### FINANCIAL IMPACT:

None,

#### BUDGET ACTION REQUIRED:

None at this time.

#### STAFF RECOMMENDATION:

Approve the recording of utility easements

#### COMMITTEE RECOMMENDATION:

**PARMENTER O'TOOLE**

*Attorneys at Law*

175 West Apple Avenue ■ P.O. Box 786 ■ Muskegon, Michigan 49443-0786  
Phone 231.722.1621 ■ Fax 231.722.7866 or 231.728.2206  
[www.Parmenterlaw.com](http://www.Parmenterlaw.com)

August 24, 2004

Ms. Gail Kunding  
City Clerk  
933 Terrace Street  
P.O. Box 536  
Muskegon, MI 49443-0536

**Re: Seaway Industrial Park**

Dear Ms. Kunding:

I was asked to provide your office with a Declaration of Easement in order to record with the Register of Deeds the location of water and sewer lines. Enclosed please find that Declaration of Easement. Please insure that Exhibit A (the legal description of the entire parcel) and Exhibit B (the legal description of the easement) are attached prior to recording.

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

Very truly yours,



John C. Schrier  
Direct: 231.722.5401  
Fax: 231.728.2206  
E-Mail Address: [jcs@parmenterlaw.com](mailto:jcs@parmenterlaw.com)

Enclosure

c: Cathy Brubaker Clarke  
Mohammed Al-Shatel

### **DECLARATION OF EASEMENT**

This Declaration is made on June 8, 2004, by **City of Muskegon**, a municipal corporation, 933 Terrace Street, Muskegon, MI 49443 ("City"), with reference to the following facts:

#### **Background**

A. City owns property referred to as the Seaway Industrial Park, specifically described on **Exhibit A** ("Property").

B. In connection with its development of the property, City desires to reserve and declare an exclusive easement over a portion of the Property, as set forth in this Agreement.

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

1. **Reservation of Easement.** City hereby reserves and declares an exclusive easement for the purposes described in Section 2 below ("Easement") over the portion of the Property legally described on **Exhibit B** ("Easement Area"). The Easement shall be perpetual.

2. **Use of the Easement.** City, its successors, assigns, employees and invitees shall be permitted to use the Easement for the purpose of installing and maintaining water lines, sewer lines, and other utilities. Any subsequent owner of the Property shall not be permitted to construct, grow or maintain any structure or improvement within such Easement Area, without the prior written approval of the Grantee.

3. **Access to Easement.** City retains the right to enter into the Easement Area property at any time and reserves the right to remove any item located on the Easement Area.

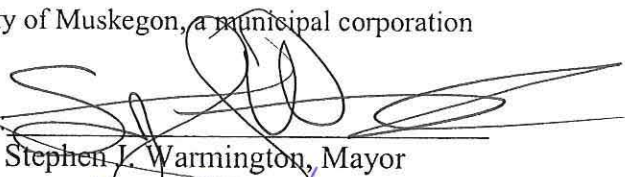
4. **Interest in Realty.** The Easement is to be an easement over the Property for the use and benefit of the City. The Easement shall run with the land and be an interest in realty. The Easement shall bind the owners and occupiers of the Property and their transferees, successors, and assigns.

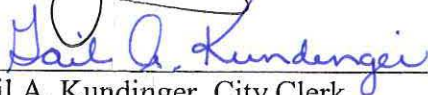
5. **Amendment to the Easement.** This Agreement may be amended only by written agreement signed by the City. This document shall be recorded with the Muskegon County Register of Deeds.

6. **Notices.** Any notices sent under this Agreement shall be in writing and shall be sent by first-class mail to the owner of the parcel at the parties address set forth above or such other address as a party may direct.

This Agreement was executed on the date set forth above.

City of Muskegon, a municipal corporation

By:   
Stephen J. Warmington, Mayor

And:   
Gail A. Kunderger, City Clerk

STATE OF MICHIGAN)  
COUNTY OF MUSKEGON)

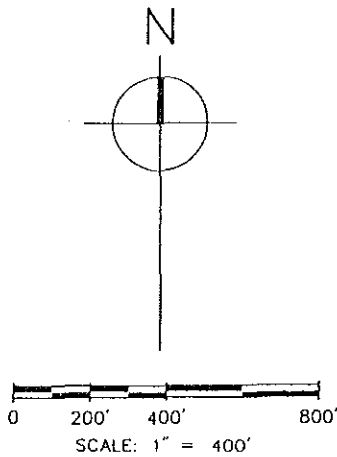
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2004, by Stephen J. Warmington as Mayor and Gail A. Kunderger as City Clerk, for and on behalf of the City of Muskegon.

  
Linda S. Potter, Notary Public  
Muskegon County, Michigan  
My commission expires: 9-25-06  
Acting in the Muskegon County

Prepared by and when recorded return to:  
John C. Schrier  
Parmenter O'Toole  
P.O. Box 786  
Muskegon, MI 49443-0786

**EXHIBIT A**

**PROPERTY**



## LAKETON AVE.

NORTH 1/4 CORNER  
SECTION 31, T.10N., R.16W.  
FND 5/8" REBAR IN BOX

N30E 50.99 16D NAIL W. SIDE PP  
S50E 63.20 16D NAIL NE SIDE PP  
S45W 49.52 16D NAIL W. SIDE PP  
N50W 66.27 LRG PK SW SIDE PP

W. LINE SE 1/4, NW FR'L 1/4  
SEC. 31, T.10N., R.16W.

PARK AVE.

YOUNG AVE.

SEAWAY DRIVE

TEMPLE ST.

WALKES ST.

DELANO AVE.

E. LINE NW FR'L 1/4 SEC. 31, T.10N., R.16W.

HENRY ST.

RUDDIMAN CREEK DRAIN

LEMUEL ST.

HACKLEY AVE.

WEST 1/4 CORNER  
SECTION 31, T.10N., R.16W.  
CO. REMON MON. IN BOX

S. LINE NW FR'L 1/4 SEC. 31, T.10N., R.16W.

SE CORNER NW FR'L 1/4  
SECTION 31, T.10N., R.16W.  
FND 1/2" PIPE 3' ± N. OF C/L

N36E 57.41 PK NAIL NW SIDE PP  
S32E 65.43 PK NAIL SW SIDE PP  
S39W 59.84 + IN CONC BASE LT POLE  
N53W 123.56 SE COR. BLDG

N45E 43.39 PK NW SIDE PP  
S30E 75.44 PK W. SIDE PP  
S45W 81.23 NE COR. BLDG.  
N70W 102.09 PK S. SIDE PP

SURVEY FOR: CITY OF MUSKEGON  
933 TERRACE STREET  
MUSKEGON, MICHIGAN 49443-0536

RE: SEC. 31, T.10N., R.16W. PARCELS A-J

I HEREBY DECLARE THAT THE LAND HEREIN DESCRIBED WAS SURVEYED UNDER MY DIRECT SUPERVISION TO THE BEST OF OUR ABILITY AND KNOWLEDGE. THE ERROR OF CLOSURE IS NO GREATER THAN 1 IN 5000. ALL THE REQUIREMENTS OF P.A. 132, 1970 HAVE BEEN COMPLIED WITH. THIS SURVEY, INCLUDING ANY NEW DESCRIPTION(S), WAS MADE FROM A PROPERTY DESCRIPTION FURNISHED TO US. THE DESCRIPTION(S) SHOULD BE COMPARED WITH A TITLE POLICY OR ABSTRACT FOR COMPLETENESS, ACCURACY, EASEMENTS AND EXCEPTIONS.

ANY COPY OF THIS SURVEY NOT INDIVIDUALLY EMBOSSED (IMPRESSED) WITH THE SEAL OF THE LICENSED PROFESSIONAL SURVEYOR NAMED HEREIN, IS UNAUTHORIZED AND MAY CONTAIN FRAUDULENT ALTERATIONS. THE DECLARATION DOES NOT APPLY TO SUCH COPY.

**PRELIMINARY**

BY ARTHUR W. BRINTNALL

P.S. 28407

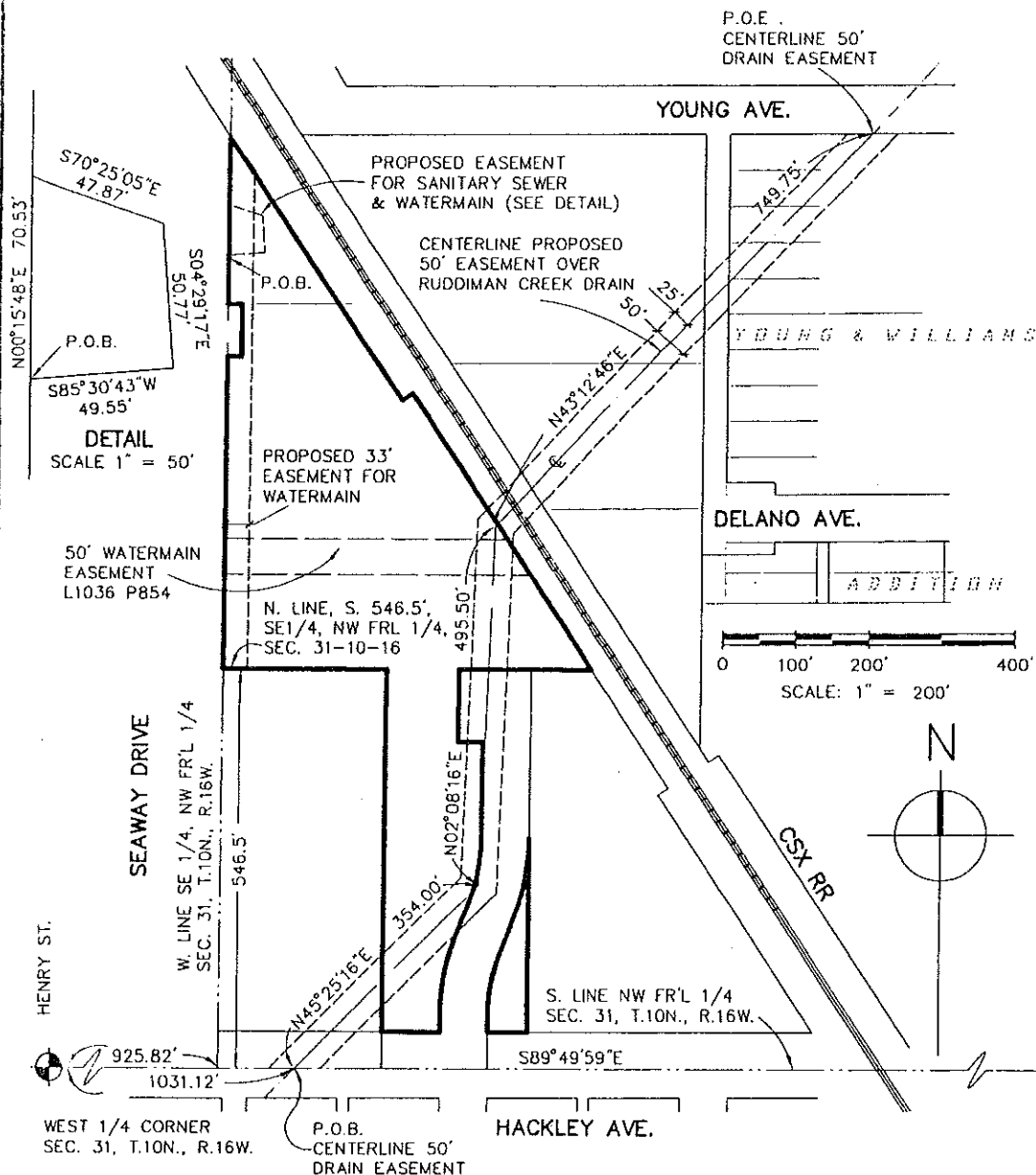
**Prein & Newhof**  
Engineers • Surveyors • Environmental • Laboratory

3355 Evergreen Drive NE  
Telephone : (616) 364-8491  
Project No : 2020325

Grand Rapids, Michigan 49525  
Fax : (616) 364-6955  
Date : JANUARY 21, 2004

**EXHIBIT B**

**EASEMENT AREA**



SURVEY FOR: CITY OF MUSKEGON  
933 TERRACE STREET  
MUSKEGON, MICHIGAN 49443-0536

RE: SEC. 31, T.10N., R.16W. PARCEL "A"  
EASEMENTS

I HEREBY DECLARE THAT THE LAND HEREIN DESCRIBED WAS SURVEYED UNDER MY DIRECT SUPERVISION TO THE BEST OF OUR ABILITY AND KNOWLEDGE. THE ERROR OF CLOSURE IS NO GREATER THAN 1 IN 5000. ALL THE REQUIREMENTS OF P.A. 132, 1970 HAVE BEEN COMPLIED WITH. THIS SURVEY, INCLUDING ANY NEW DESCRIPTION(S), WAS MADE FROM A PROPERTY DESCRIPTION FURNISHED TO US. THE DESCRIPTION(S) SHOULD BE COMPARED WITH A TITLE POLICY OR ABSTRACT FOR COMPLETENESS, ACCURACY, EASEMENTS AND EXCEPTIONS.

ANY COPY OF THIS SURVEY NOT INDIVIDUALLY EMBOSSED (IMPRESSED) WITH THE SEAL OF THE LICENSED PROFESSIONAL SURVEYOR NAMED HEREIN, IS UNAUTHORIZED AND MAY CONTAIN FRAUDULENT ALTERATIONS. THE DECLARATION DOES NOT APPLY TO SUCH COPY.

PREIN & NEWHOF, INC.

BY ARTHUR W. BRINTNALL

P.S. 28407

**Prein & Newhof**  
Engineers • Surveyors • Environmental • Laboratory

3355 Evergreen Drive NE  
Telephone: (616) 364-8491  
Project No.: 2020325

Grand Rapids, Michigan 49525  
Fax: (616) 364-6955  
Date: JANUARY 21, 2004

**PARMENTER O'TOOLE**

*Attorneys at Law*

175 West Apple Avenue ■ P.O. Box 786 ■ Muskegon, Michigan 49443-0786  
Phone 231.722.1621 ■ Fax 231.722.7866 or 231.728.2206  
[www.Parmenterlaw.com](http://www.Parmenterlaw.com)

August 24, 2004

Ms. Gail Kunding  
City Clerk  
933 Terrace Street  
P.O. Box 536  
Muskegon, MI 49443-0536

**Re: Seaway Industrial Park**

Dear Ms. Kunding:

I was asked to provide your office with a Declaration of Easement in order to record with the Register of Deeds the location of water and sewer lines. Enclosed please find that Declaration of Easement. Please insure that Exhibit A (the legal description of the entire parcel) and Exhibit B (the legal description of the easement) are attached prior to recording.

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

Very truly yours,

John C. Schrier  
Direct: 231.722.5401  
Fax: 231.728.2206  
E-Mail Address: [jcs@parmenterlaw.com](mailto:jcs@parmenterlaw.com)

Enclosure

c: Cathy Brubaker Clarke  
Mohammed Al-Shatel

11-3-04  
Gail,  
Please see  
note from  
Register of  
Deeds.

If I can help,  
just let me know.

Marks  
Kira



Mark Fairchild, Muskegon Co ROD 034

5137136

L-3636 P-772

01/28/2005 03:19P

Page: 1 of 4



Mark Fairchild, Muskegon Co ROD 034

5125109

L-3624 P-768

10/28/2004 10:45A

Page: 1 of 6

*Re-record to correct legal description*

### **DECLARATION OF EASEMENT**

This Declaration is made on June 8, 2004, by **City of Muskegon**, a municipal corporation, 933 Terrace Street, Muskegon, MI 49443 ("City"), with reference to the following facts:

#### **Background**

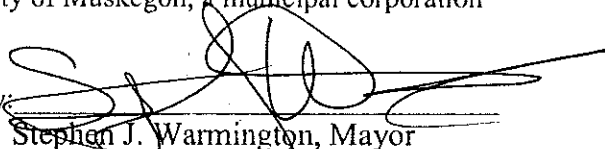
- A. City owns property referred to as the Seaway Industrial Park, specifically described on **Exhibit A** ("Property").
- B. In connection with its development of the property, City desires to reserve and declare an exclusive easement over a portion of the Property, as set forth in this Agreement.

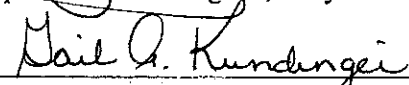
#### **Therefore, the parties agree as follows:**

1. **Reservation of Easement.** City hereby reserves and declares an exclusive easement for the purposes described in Section 2 below ("Easement") over the portion of the Property legally described on **Exhibit B** ("Easement Area"). The Easement shall be perpetual.
2. **Use of the Easement.** City, its successors, assigns, employees and invitees shall be permitted to use the Easement for the purpose of installing and maintaining water lines, sewer lines, and other utilities. Any subsequent owner of the Property shall not be permitted to construct, grow or maintain any structure or improvement within such Easement Area, without the prior written approval of the Grantee.
3. **Access to Easement.** City retains the right to enter into the Easement Area property at any time and reserves the right to remove any item located on the Easement Area.
4. **Interest in Realty.** The Easement is to be an easement over the Property for the use and benefit of the City. The Easement shall run with the land and be an interest in realty. The Easement shall bind the owners and occupiers of the Property and their transferees, successors, and assigns.
5. **Amendment to the Easement.** This Agreement may be amended only by written agreement signed by the City. This document shall be recorded with the Muskegon County Register of Deeds.
6. **Notices.** Any notices sent under this Agreement shall be in writing and shall be sent by first-class mail to the owner of the parcel at the parties address set forth above or such other address as a party may direct.

This Agreement was executed on the date set forth above.

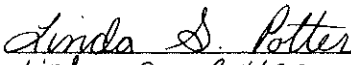
City of Muskegon, a municipal corporation

By:   
Stephen J. Warmington, Mayor

And:   
Gail A. Kunderger, City Clerk

STATE OF MICHIGAN)  
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2004, by Stephen J. Warmington as Mayor and Gail A. Kunderger as City Clerk, for and on behalf of the City of Muskegon.

  
Linda S. Potter, Notary Public  
Muskegon County, Michigan  
My commission expires: 9-25-06  
Acting in the Muskegon County

✓ Prepared by and when recorded return to:  
John C. Schrier  
Parmenter O'Toole  
P.O. Box 786  
Muskegon, MI 49443-0786



Mark Fairchild, Muskegon Co ROD 034

5137136  
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01/28/2005 03:19P  
Page: 2 of 4



Mark Fairchild, Muskegon Co ROD 034

5125109  
L-3624 P-768  
10/28/2004 10:45A  
Page: 2 of 6

EXHIBIT A

PROPERTY

DESCRIPTION:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 31, T.10N., R.16W., CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN THENCE S89°49'59"E 1151.89 FEET ALONG THE SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SAID SECTION 31 FOR REFERENCE POINT \A"; THENCE N00°15'48"E 49.50 FEET ALONG THE WEST LINE OF THE EAST 200 FEET OF THE WEST 426.07 FEET OF THE SOUTHEAST 1/4 OF SAID NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE N00°15'48"E 497.00 FEET; THENCE N89°49'59"W 226.07 FEET ALONG THE NORTH LINE OF THE SOUTH 546.5 FEET OF SAID SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE N00°15'48"E 431.08 FEET ALONG THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE N89°58'42"E 20.00 FEET; THENCE N00°15'48"E 74.00 FEET; THENCE S89°58'42"W 20.00 FEET; THENCE N00°15'48"E 232.37 FEET ALONG SAID WEST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE S33°14'47"E 437.94 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE RAILROAD; THENCE N56°45'13"E 17.00 FEET ALONG SAID RIGHT OF WAY; THENCE S33°14'47"E 152.90 FEET ALONG SAID RIGHT OF WAY; THENCE S33°25'49"E 304.51 FEET ALONG SAID RIGHT OF WAY; THENCE N89°49'59"W 184.14 FEET ALONG SAID NORTH LINE OF THE SOUTH 546.5 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE S00°10'01"W 100.00 FEET; THENCE S89°49'59"E 34.00 FEET; THENCE S00°10'01"W 132.00 FEET; THENCE SOUTHERLY 87.50 FEET ON A 237.00 FOOT RADIUS (24°10'32" DEG) CURVE TO THE RIGHT, DELTA=21°09'11", LONG CHORD BEARING S10°44'36"W 87.00 FEET; THENCE S21°19'12"W 50.00 FEET; THENCE SOUTHERLY 111.86 FEET ON A 303.00 FOOT RADIUS (18°54'34" DEG) CURVE TO THE LEFT, DELTA=21°09'11", LONG CHORD BEARING S10°44'36"W 111.23 FEET; THENCE S00°10'01"W 23.50 FEET; THENCE N89°49'59"W 79.49 FEET ALONG THE NORTH LINE OF THE SOUTH 49.5 FEET OF SAID SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31 TO POINT OF BEGINNING.

AND ALSO:

RECOMMENCING AT SAID REFERENCE POINT \A" THENCE S89°49'59"E 145.57 FEET ALONG SAID SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31; THENCE N00°10'01"E 49.50 FEET FOR POINT OF BEGINNING; THENCE N00°10'01"E 23.50 FEET; THENCE NORTHERLY 87.50 FEET ON A 237.00 FOOT RADIUS (24°10'32" DEG) CURVE TO THE RIGHT, DELTA=21°09'11", LONG CHORD BEARING N10°44'36"E 87.00 FEET; THENCE N21°19'12"E 50.00 FEET; THENCE NORTHERLY 111.86 FEET ON A 303.00 FOOT RADIUS (18°54'34" DEG) CURVE TO THE LEFT, DELTA=21°09'11", LONG CHORD BEARING N10°44'36"E 111.23 FEET; THENCE S00°10'01"W 265.00 FEET; THENCE N89°49'59"W 54.43 FEET ALONG SAID NORTH LINE OF THE SOUTH 49.5 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31 TO POINT OF BEGINNING.



EXHIBIT B

EASEMENT AREA

DESCRIPTION FOR EASEMENT OVER RUDDIMAN CREEK DRAIN:

A 50 FOOT WIDE STRIP OF LAND, CENTERLINE DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SECTION 31, T.10N., R.16W., CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN THENCE S89°49'59"E 1031.12 FEET ALONG THE SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SAID SECTION 31 FOR POINT OF BEGINNING OF SAID CENTERLINE; THENCE N45°25'16"E 354.00 FEET; THENCE N02°08'16"E 495.50 FEET; THENCE N43°12'46"E 749.75 FEET FOR POINT OF ENDING OF SAID CENTERLINE ON THE SOUTH RIGHT OF WAY LINE OF YOUNG AVENUE IN YOUNG & WILLIAMS ADDITION, CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN AS RECORDED IN LIBER 3 OF PLATS, PAGE 39, MUSKEGON COUNTY REGISTER OF DEEDS.

THE SIDELINES OF SAID 50 FOOT WIDE STRIP OF LAND EXTEND OR SHORTEN TO ALLOW NO GAPS OR OVERLAPS.

PROPOSED EASEMENT FOR SANITARY SEWER AND WATERMAIN:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 31, T.10N., R.16W., CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN THENCE S89°49'59"E 925.82 FEET ALONG THE SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SAID SECTION 31 THENCE N00°15'48"E 1119.74 FEET ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID NORTHWEST FRACTIONAL 1/4 OF SECTION 31 FOR POINT OF BEGINNING; THENCE N00°15'48"E 70.53 FEET; THENCE S70°25'05"E 47.87 FEET; THENCE S04°29'17"E 50.77 FEET; THENCE S85°30'43"W 49.55 FEET TO POINT OF BEGINNING.

PROPOSED EASEMENT FOR WATERMAIN:

THAT PART OF THE WEST 33 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31, T.10N., R.16.W., CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, LYING SOUTH OF THE CSX RAILROAD RIGHT OF WAY, EXCEPT THE SOUTH 546.5 FEET THEREOF.

NOTE: BEARINGS BASED ON THE EAST LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 31, T.10N., R.16W. PER PLAT OF YOUNG & WILLIAMS ADDITION AS RECORDED IN LIBER 3 OF PLATS, PAGE 39, MUSKEGON COUNTY REGISTER OF DEEDS.



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L-3636 P-772

01/28/2005 03:19P

Page: 4 of 4

AGENDA ITEM NO. \_\_\_\_\_

**CITY COMMISSION MEETING June 8, 2004**

**TO:** Honorable Mayor and City Commissioners

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

**DATE:** June 2, 2004

**RE:** MCACA Grant Application

**SUMMARY OF REQUEST:**

To authorize applying for a MCACA grant on behalf of the Frauenthal Center for the Performing Arts for capital improvements to the Hilt Building.

**FINANCIAL IMPACT:**

None. The Community Foundation will be responsible for the grant match.

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To authorize the application.

**COMMITTEE RECOMMENDATION:**

None.

# Application Form

## Capital Improvements Program

Council Policy requires that an application be submitted by June 1, 2004 to be considered for fiscal year 2005 funding. Each project must be submitted on a separate form. Before preparing the application, please read the preceding guidelines and application instructions. A copy of this page will be returned to you indicating receipt of your application. If you haven't received this acknowledgment by July 1, 2004, contact the Council offices at 517/241-4011. Authorized by Executive Order 1991-21. Application must be typed.

applicant name & address

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

project/activity title (use the same title as in section 3)

Frauenthal Center for the Performing Arts Facility & Equipment

### Application fee

Index 23000 Comp. Obj 1795

Applicants must provide a non-refundable fee of \$300 or three percent of the grant request, whichever is less. This fee is subject to legislative changes.

A check in the amount of the application fee must be returned with this application.

Make Check payable to:  
The State of Michigan.  
*Staple the check to this page*

Cash payment is not accepted.

Enter grant request

\$77,000

Multiply by 3%

Application Fee

\$300

(not to exceed \$300)

For MCACA Staff use only

Control # 05CT

received ☐ on time ☐ late

Items received:

- |                                   |                                 |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> App form | <input type="checkbox"/> Att 1  |
| <input type="checkbox"/> Att 2    | <input type="checkbox"/> Att 3  |
| <input type="checkbox"/> Att 4    | <input type="checkbox"/> Att 5  |
| <input type="checkbox"/> Att 6    | <input type="checkbox"/> Att 7  |
| <input type="checkbox"/> Att 8    | <input type="checkbox"/> Att 9  |
| <input type="checkbox"/> Att 10   | <input type="checkbox"/> Att 11 |
| <input type="checkbox"/> Att 12   |                                 |

Envelopes

- |                                                   |                                 |
|---------------------------------------------------|---------------------------------|
| <input type="checkbox"/> original                 | <input type="checkbox"/> copy 1 |
| <input type="checkbox"/> copy 2                   | <input type="checkbox"/> copy 3 |
| <input type="checkbox"/> documentation 1 (Att 12) |                                 |
| <input type="checkbox"/> documentation 2 (Att 12) |                                 |
| <input type="checkbox"/> documentation 3 (Att 12) |                                 |

### Section 1: Cover Page, Project Summary

Please limit your response to the space provided below.

Grant funds are requested for necessary repairs and upgrades to the Frauenthal Center for the Performing Arts (FCPA) facilities and equipment. The FCPA includes the historically restored 1748-seat Frauenthal Theater, 168-seat Beardsley Theater, two large rehearsal halls, a gallery, three meeting rooms, a conference room, a restaurant, and three floors of office space which houses FCPA Administration, the West Shore Symphony Orchestra, the Muskegon Civic Theatre, the Community Foundation for Muskegon County, and others.

As the premiere Performing Arts center in Western Michigan, the FCPA (a 501c3 nonprofit organization) is dedicated to advancing the cultural and economic environment of the area. In doing so, it is essential that the facility be in state-of-the-art condition.

The following necessary repairs are to be completed between 10/1/04 and 9/30/05. Repairs include: leaking entrance to the Hilt Building, leaking box office windows, numerous basement leaks, replace dressing room windows, repair weather lobby entrance doors to the FCPA, repair marquee, replace condensate pan and valves, insulate condenser and A/C lines, repair four large chilled water flow units, repair/replace boiler piping and gas valves, repair/replace three VAV damper motors in the FCPA lobby, repair two sewage pumps, soundproof rehearsal halls, repair plaster walls in lobby restrooms, replace Wenger choral risers, 12 portable two-way radios, repair orchestra pit lift, and replace sound and light absorbing curtains in conference room and rehearsal halls.

Check one ☐ Community Cultural Planning Grant  
☒ Capital Projects Grant

Cover Page, Project Financial Summary – Figures from Section 5, Project Budget

Cash match --from line 20

\$77,000

Total revenue --from line 19

\$154,000

Total expenses --from line 34

\$154,000

| SECTION 2: APPLICANT INFORMATION                                                       |                                        |                                     |  |
|----------------------------------------------------------------------------------------|----------------------------------------|-------------------------------------|--|
| Applicants legal name<br>Muskegon, Michigan                                            |                                        | telephone<br>231-724-6724           |  |
| other common name                                                                      |                                        | website (URL)                       |  |
| official mailing address<br>933 Terrace Street, PO Box 536                             |                                        |                                     |  |
| city, state & zip code<br>Muskegon, Michigan 49443-0536                                |                                        | office hours<br>8:00am - 5:00pm     |  |
| authorizing official or board designee (can not be same as proj. dir.)<br>Bryon Mazade |                                        | title<br>City Manager               |  |
| board chairperson<br>Steve Wannington                                                  |                                        | title<br>Mayor                      |  |
| address<br>993 Terrace Street, PO Box 536                                              |                                        |                                     |  |
| city, state & zip code<br>Muskegon, Michigan 49443-0536                                |                                        | county name and code<br>Muskegon 61 |  |
| federal I.D. number<br>38-6004522                                                      | status code<br>08 Municipal Government | institution code<br>38              |  |
| U.S. Representative<br>Pete Hoekstra                                                   |                                        | district number<br>2                |  |
| State Senator<br>Leon Stille                                                           |                                        | district number<br>32               |  |
| State Representative<br>Julie Dennis                                                   |                                        | district number<br>92nd             |  |
| Applicant's primary discipline code<br>15                                              | Grantee race code<br>w                 |                                     |  |

| SECTION 3: PROJECT INFORMATION                                                               |                                  |                                                                  |                     |
|----------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------|---------------------|
| project director (contact person (cannot be same as auth. off.))<br>Mary S. Oleniczak        |                                  | title<br>Executive Director                                      |                     |
| address<br>425 West Western Avenue, Suite #200                                               |                                  | city, state & zip code<br>Muskegon, MI 49440                     |                     |
| business telephone & hours<br>231-722-9750 9:00am - 6:00pm                                   |                                  | home telephone & hours<br>231-557-0083 after 6:00pm and weekends |                     |
| fax number<br>231-722-4616                                                                   |                                  | email address<br>moleniczak@cffinc.org                           |                     |
| project/activity title<br>Frauenthal Center for the Performing Arts Facility & Equipment Upg |                                  | start date<br>10/01/04                                           | end date<br>9/30/05 |
| activity's primary discipline code<br>14                                                     | project race/ethnicity code<br>W |                                                                  |                     |
| type of activity code<br>07                                                                  | arts education code<br>99        | Project Descriptor<br>P                                          |                     |
| project primary county code(s) ---- enter all that apply<br>61                               |                                  |                                                                  |                     |

**SECTION 4: SUMMARY INFORMATION****Section 4a: Budget Summary (use the figures from Section 5; Projected Budget)**

|                                                        |                                                     |                                                      |                                                 |
|--------------------------------------------------------|-----------------------------------------------------|------------------------------------------------------|-------------------------------------------------|
| total earned revenue<br>from line 4<br><br>\$25,000    | total cash revenue<br>from line 17<br><br>\$154,000 | total cash expenses<br>from line 32<br><br>\$154,000 |                                                 |
| total unearned revenue<br>from line 15<br><br>\$52,000 | total in-kind support<br>from line 18<br><br>\$0    | total in-kind expenses<br>from line 33<br><br>\$0    |                                                 |
| cash match<br>from line 20<br><br>\$77,000             | total revenue<br>from line 19<br><br>\$154,000      | total expenses<br>from line 34<br><br>\$154,000      | Council request<br>from line 16<br><br>\$77,000 |

**Section 4b: Project Participation Summary**

(this information should represent your projections and estimates for the entire grant period)

|                                                     |                                           |
|-----------------------------------------------------|-------------------------------------------|
| Total number of Michigan artists participating<br>2 | Total paid to Michigan artists<br>\$5,000 |
| Total number of artists participating<br>2          | Total paid to artists<br>\$5,000          |
| Total number of individuals benefitting<br>45       | Total number of youth benefitting<br>0    |
| Total number of new hires<br>2                      | Total number of employees<br>10           |

**Section 4c: AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION**

Are your facilities and PROGRAMS accessible to persons with disabilities?

Circle one  
☒ Y ☐ N

Are accessibility issues included in your organization's long range plans?

☒ Y ☐ N

Has an ADA evaluation of your organization's facilities / programs been conducted?

☒ Y ☐ NIf yes give date completed: 1/1/98

Are staff members informed and trained in access issues

☒ Y ☐ N

Please provide the name and title of the designated staff person responsible for ADA Compliance.

Bill Bodell, Operations Manager

Name

Title

**SECTION 5: PROJECTED BUDGET**

The budget must balance. Total revenues (line 19) must equal total expenses (line 34) The amount of in-kind support (line 18) must equal in-kind expenses (line 33) Round all budget figures to the nearest whole dollar. Budget figures must be itemized in Attachment #2, including all payments to artists.

|                                         |                                                       |             |                |
|-----------------------------------------|-------------------------------------------------------|-------------|----------------|
| Applicant Name: Muskegon, Michigan      |                                                       |             |                |
| <b>REVENUES-----Earned</b>              |                                                       | <b>CASH</b> | <b>IN-KIND</b> |
| 1. Admissions                           | \$25,000                                              |             |                |
| 2. Contracted services                  |                                                       |             |                |
| 3. Other                                |                                                       |             |                |
| 4. Total earned revenue                 | add lines 1,2 & 3.<br>copy the total to Section 4a    | \$25,000    |                |
| <b>REVENUES-----Unearned</b>            |                                                       |             |                |
| 5. Corporate support                    | \$10,000                                              |             |                |
| 6. Foundation support                   | \$20,000                                              |             |                |
| 7. Other private support                | \$2,000                                               |             |                |
| 8. Federal support                      |                                                       |             |                |
| 9. Regional support                     |                                                       |             |                |
| 10. Local government support            |                                                       |             |                |
| 11. Other unearned revenue              |                                                       |             |                |
| 12. Applicant cash                      | \$20,000                                              |             |                |
| 13. Sub-total unearned revenue          | add lines 5 -through- 12                              | \$52,000    |                |
| 14. State support -not from Council     |                                                       |             |                |
| 15. Total unearned revenue              | add lines 13 & 14.<br>copy the total to Section 4a    | \$52,000    |                |
| 16. MCACA grant request amount          | Copy to Section 4a                                    | \$77,000    |                |
| 17. Total cash revenue                  | add lines 4, 15 & 16.<br>copy the total to Section 4a | \$154,000   |                |
| 18. Total in-kind support -from line 33 | Copy the total to Section 4a                          | \$0         |                |
| 19. Total revenues                      | add lines 17 & 18. copy the total Section 4a          | \$154,000   |                |
| 20. Cash match                          | add lines 4 & 13.<br>copy the total to Section 4a     | \$77,000    |                |

**SECTION 5: PROJECTED BUDGET continued**

|                                                                                                                    |             |                |
|--------------------------------------------------------------------------------------------------------------------|-------------|----------------|
| Applicant Name: Muskegon, Michigan                                                                                 |             |                |
| <b>EXPENSES</b>                                                                                                    | <b>CASH</b> | <b>IN-KIND</b> |
| 21. Administrative employees                                                                                       | \$8,000     |                |
| 22. Artistic employees                                                                                             |             |                |
| 23. Technical/production employees                                                                                 | \$20,000    |                |
| 24. Artistic fees/services -non-employee                                                                           | \$5,000     |                |
| 25. Other fees/services - non-employee                                                                             |             |                |
| 26. Space rental                                                                                                   |             |                |
| 27. Travel                                                                                                         |             |                |
| 28. Marketing, publicity & promotion                                                                               | \$4,000     |                |
| 29. Other expenses                                                                                                 | \$2,500     |                |
| 30. Capital expenses - acquisitions                                                                                |             |                |
| 31. Capital expenses - other                                                                                       | \$114,500   |                |
| 32. Total cash expenses <small>add lines 21 through 31.<br/>copy the total to Section 4a</small>                   | \$154,000   |                |
| 33. Total in-kind expenses <small>add lines 21 through 31.<br/>copy the total to line 18 and to Section 4a</small> |             | \$0            |
| 34. Total expenses <small>add lines 32 &amp; 33. copy the total to Section 4a</small>                              |             | \$154,000      |

**As Attachment #2** — provide a detail itemization / explanation for each figure in the budget, on both the revenue side and the expense side. Itemize each budget figure by identifying the individual dollar amounts, that when added together, equal the amount you reported in your projected budget. You must indicate the source for revenue figures or the use for expense figures, for every itemized figure.

The itemized figure for payments to all artists must identify by name the artist, or groups of artists, who will be paid and their fee. (Instead of listing the names of artists, or group of artists', you may substitute the type and number of artists to be paid and their fees.) Be sure the total amount to be paid to artists is itemized.

The itemization must explain every dollar listed in the budget. Figures broken down in the itemization must match the figures entered on a particular budget line. The budget must be complete. The budget must be typed. The budget numbers must be rounded to the nearest whole dollar (do not include cents).

The budget must balance: Total cash revenues (line 17) must equal total cash expenses (line 32)  
Total in-kind support (line 18) must equal total in-kind expenses (line 33)  
Total revenues (line 19) must equal total expenses (line 34).

The budget must be accurate and should contain no mathematical errors.

## SECTION 6: FORMS--For Capital Projects Applicants Only

Michigan Department of History Arts and Libraries  
Michigan Council for Arts and Cultural Affairs  
P.O. Box 30706  
Lansing, MI 48909

Capital Improvements Program  
**NON-PROFIT (SUBGRANTEE) ORGANIZATION INFORMATION**  
Fiscal Year 2005

**Instructions:** Provide the following information for each project being implemented by a Non-Profit Organization (subgrantees make copies of this form as needed.)

|                                                                                                                                                                                                                                                                     |                        |                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------------|
| Name of Non-profit Organization<br>The Muskegon County Community Four                                                                                                                                                                                               | Date Founded<br>1/1/66 | Number of members (if any)<br>n/a |
| Legal Status:<br><div style="display: flex; justify-content: space-between; align-items: center;"><div><input type="checkbox"/> 501 (c) (2)<br/><input checked="" type="checkbox"/> 501 (c) (3)</div><div>Attach a copy of the IRS determination letter</div></div> |                        |                                   |

**SECTION 6: FORMS -- For Capital Projects Applicants Only**

Michigan Department of History Arts and Libraries  
Michigan Council for Arts and Cultural Affairs  
P.O. Box 30706  
Lansing, MI 48909

Capital Improvements Program  
**CERTIFICATION OF OWNERSHIP / OPTION TO PURCHASE**  
Fiscal Year 2005

| Project title<br>Frauenthal Center for the Performing Arts Facility & Equipment Upgrades                                                                                                                                                                                                                                                                                                                                                                                                                 |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------|--|--|-------------|-------------|-------|---------------------------------------|-----------|-----------|---------------------|-----------|------------|
| Description of Real or Personal Property<br>Real Estate located at 427 W. Western Ave.<br>City of Muskegon<br>Revised Plat 1903 W. 46 Feet of Lot 3<br>E. 42 Ft. Lot 4, Block 313                                                                                                                                                                                                                                                                                                                        |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Project's Cost and Funding:                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |             | <table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th colspan="3" style="text-align: center;">USE OF FUNDS</th></tr><tr><th style="width: 33%;">Grant Funds</th><th style="width: 33%;">Local Funds</th><th style="width: 34%;">Total</th></tr></thead><tbody><tr><td style="padding: 2px;">Purchase of real or Personal Property</td><td style="text-align: right; padding: 2px;">\$ 10,050</td><td style="text-align: right; padding: 2px;">\$ 20,100</td></tr><tr><td style="padding: 2px;">Total Project Costs</td><td style="text-align: right; padding: 2px;">\$ 77,000</td><td style="text-align: right; padding: 2px;">\$ 154,000</td></tr></tbody></table> |  | USE OF FUNDS |  |  | Grant Funds | Local Funds | Total | Purchase of real or Personal Property | \$ 10,050 | \$ 20,100 | Total Project Costs | \$ 77,000 | \$ 154,000 |
| USE OF FUNDS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Grant Funds                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Local Funds | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Purchase of real or Personal Property                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$ 10,050   | \$ 20,100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Total Project Costs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$ 77,000   | \$ 154,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Option terms (if applicable)                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |             | Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Time Period ..... From: _____ To: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |             | \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| Certification<br>I do hereby certify that (Applicant) owns or holds a written option to purchase the above property, that the property description and amounts are accurate, and that the property rights are free of restrictive covenants, liens or encumbrances which would prohibit the timely transfer of property essential to completion of the project above.                                                                                                                                    |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |
| <div style="text-align: center;"><div style="font-family: cursive; font-size: 1.2em; margin-bottom: 10px;">Community Foundation for Muskegon County</div><div style="display: flex; justify-content: space-around;"><div style="text-align: center;"><div style="font-family: cursive; font-size: 1.2em;">Chris A McGinnis</div><div style="font-size: 0.8em;">President</div></div><div style="text-align: center;"><div style="font-family: cursive; font-size: 1.2em;">6/1/04</div></div></div></div> |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |              |  |  |             |             |       |                                       |           |           |                     |           |            |

AGENDA ITEM NO. \_\_\_\_\_

CITY COMMISSION MEETING 6/8/04

**TO:** Honorable Mayor and City Commissioners

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

**DATE:** June 8, 2004

**RE:** Boilerworks Project

**SUMMARY OF REQUEST:**

To authorize staff to work with HDC Companies to designate the Boilerworks property (including the "yellow building") as a historic district and include it in the City's Brownfield Plan (including a letter of support).

**FINANCIAL IMPACT:**

None.

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

None.

**COMMITTEE RECOMMENDATION:**

None.

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43155 Main St., #2202  
Novi, Michigan 48375

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248.615.4800 (tel)  
248.615.4803 (fax)

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May 19<sup>th</sup>, 2004

Ms. Cathy Brubaker-Clarke  
Economic Development Director  
City of Muskegon

Dear Ms. Brubaker-Clarke,

I am requesting to be placed on the agenda for the June 7<sup>th</sup> City Council work session and for the Jun 8<sup>th</sup> City Council meeting for the following issues:

- A. A discussion of our request for The Muskegon Boilerworks site to be included into the City's Brownfield plan and a letter of support from the city, so that we may file a Notice of Intent with the Michigan Economic Development Corporation that we will be requesting a state of Michigan Single Business Tax Credit.
- B. The completion of the Historic Designation of the Muskegon Boilerworks site, including the "Yellow Building," so that we may complete the state designation process and apply for the State of Michigan Historical Tax Credits.

I look forward to working out these issues with the City.

Respectfully yours,

Bob Jacobson