

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 10, 2011

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Aggregates, Highway Maintenance Materials and Concrete. PUBLIC WORKS
 - C. City – MDOT Agreement for the Reconstruction of Laketon, Beidler to Park. ENGINEERING
 - D. Request to Submit Grant Application for the Reconstruction of Laketon between Park and Peck. ENGINEERING
 - E. Watermain Purchase. PUBLIC WORKS
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
- ❑ ANY OTHER BUSINESS:
- ❑ PUBLIC PARTICIPATION:
 - *Reminder: Individuals who would like to address the City Commission shall do the following:*
 - Fill out a request to speak form attached to the agenda or located in the back of the room.
 - Submit the form to the City Clerk.
 - Be recognized by the Chair.
 - Step forward to the microphone.

- State name and address.
- Limit of 3 minutes to address the Commission.
- (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

❑ **CLOSED SESSION: Attorney Client Privileged Information.**

❑ **ADJOURNMENT:**

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

Date: May 10, 2011
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the City Commission Meeting that was held on Tuesday, April 26, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

APRIL 26, 2011

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, April 26, 2011.

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

Mayor Warmington asked for a moment of silence in honor of Kalamazoo Officer Eric Zapata.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Steve Wisneski, Chris Carter, Clara Shepherd, Lawrence Spataro, and Sue Wierengo, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker.

2011-27 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the April 11th Commission Worksession Meeting and the April 12th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Appointments to Various Boards and Committees. CITY CLERK

SUMMARY OF REQUEST: To appoint Norm Cunningham to the Civil Service Board, Roger Brink to the Downtown Development Authority, and Joe Doyle to the Planning Commission.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: The Community Relations Committee recommended the appointments at their April 11th meeting.

C. Special Event Request – Catamaran Racing Association of Michigan

(CRAM). PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: CRAM is requesting permission to hold a Catamaran sailing event at Pere Marquette Park August 19 through 21, 2011. They would like to use the City-owned lot that is currently being leased by Captain Jack's for overnight camping on August 19 and 20, 2011. There will be approximately 10 to 12 RVs in the lot overnight. This is the event's fourth year of operation, and they have provided proof of liability insurance.

The owners of Captain Jack's (CJ's on the Beach) submitted a letter indicating their support of the event.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution allowing for overnight camping at Pere Marquette for this event on August 19 and 20, 2011,

COMMITTEE RECOMMENDATION: This request was recommended for approval by the City's Special Event Approval staff.

D. Police Vehicle Purchase. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to purchase five Ford Crown Victoria Police Interceptor Patrol Cars from Great Lakes Ford.

FINANCIAL IMPACT: Total cost \$109,660.

BUDGET ACTION REQUIRED: None, the 2010/11 Equipment Fund 3rd Quarter Budget Reforecast has been adjusted to include the purchase.

STAFF RECOMMENDATION: Approve purchase from Great Lakes Ford.

E. Consideration of Bids for Getty Street Reconstruction, Laketon to Evanston (H-1669). ENGINEERING

SUMMARY OF REQUEST: Award the project to Jackson Merkey Contractors out of Muskego, MI since they were the lowest responsible bidder with a bid price of \$1,179,240.54.

The award, if approved, must be contingent upon approval by MDOT since the project has State funding.

FINANCIAL IMPACT: The estimated cost of the project is over one million dollars for the street part of the construction which is partially funded by \$375,000 of TEDF-F (state funds) grant; \$130,000 of CDBG funds and the remaining cost will have to be from bonds proceeds.

BUDGET ACTION REQUIRED: The matching funds will require the issuance of bonds.

STAFF RECOMMENDATION: Award the contract to Jackson Merkey.

F. City – MDOT Agreement for the Reconstruction of Getty Street, Keating to Laketon. ENGINEERING

SUMMARY OF REQUEST: Approve the contract with MDOT for the reconstruction of Getty Street from Keating to Laketon. And approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the approved federal funds of \$300,000. The estimated total construction cost is \$700,000.

BUDGET ACTION REQUIRED: Due to the short fall of street funds the City will use bond money for the match.

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

G. Authorization to Director and/or Office Manager. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize the Director of Public Works and/or DPW's office manager to sign off on the titles and registrations for newly acquired and/or sold vehicles by adopting the resolution.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize the director and/or office manager by adopting the resolution.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the Consent Agenda as read.

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

Nays: None

MOTION PASSES

2011-28 PUBLIC HEARINGS:

A. Public Hearing for 2011 – 2012 CDBG/HOME Grants. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To close the comment period and conduct a public hearing of the 2011-2012 CDBG/HOME grants.

FINANCIAL IMPACT: The 2011-2012 Community Development Block Grant and HOME budgets will establish the annual Action Plan for the Community and Neighborhood Services department.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Complete public hearing for 2011-2012 CDBG/HOME

grants based on Commission's preliminary recommendations.

The Public Hearing opened to hear and consider any comments from the public. Comments were heard from Dan Bonner, 1652 Nelson, Managing Attorney of Legal Aid of Western Michigan; Dannette Williams, 310 Iona and Judy Smith, 271 E. Hile, representing Sacred Suds; Charlotte Johnson, 219 Catherine, representing McLaughlin Healthy Neighborhood Project; Tom Pastoor, 1291 Terrace Street, President McLaughlin Neighborhood Association; and letter from Julie Kitchen, Sacred Suds.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to close the Public Hearing.

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

Nays: None

MOTION PASSES

2011-29 NEW BUSINESS

A. Application for Special License (Liquor Control Commission). PUBLIC SAFETY

SUMMARY OF REQUEST: The USS LST393 Preservation Association has submitted an application for a Special License for Beer, Wine and Spirits for Consumption on the Premises for May 7, 2011. This license is for a fund-raising event to watch the Kentucky Derby.

The Foundation meets all of the requirements for the special license with the exception of the request for "spirits". Commission policy dictates that any special license request which includes spirits must be considered and approved by the body.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff has no recommendation.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the application for a Special License for USS LST393 Preservation Association.

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

Nays: None

MOTION PASSES

B. Third Quarter 2010-11 Budget Reforecast. FINANCE

SUMMARY OF REQUEST: At this time staff is transmitting the *Third Quarter*

2010-11 Budget Reforecast which outlines proposed changes to the original budget that have come about as result of changes in policy priorities, labor contracts, updated economic conditions, or other factors.

FINANCIAL IMPACT: Proposed changes to the 2010-11 budget include:

- Increase in estimated income tax revenues from the original budgeted amount of \$6.0 to \$6.7 million based on continued recovery from the recession
- Decrease in estimated state-shared revenues from \$3,774,813 to \$3,594,813 due to population loss in the 2010 census
- Adjustments to operating budgets reflecting position vacancies/transfers and other factors
- Adjustments to equipment and other major capital projects reflecting actual expenditures to date, project postponements or other factors

Overall, we project ending FY 2011 with a general fund fund balance of \$4.125 million, down from \$6.038 million at 6/30/10. Bear in mind, however, that this drawdown in fund balance was planned and is related to an earlier decision to make a \$1.0 million supplemental payment to MERS and pay down debts including ULA loans and fire truck leases.

BUDGET ACTION REQUIRED: Self-explanatory.

STAFF RECOMMENDATION: Approval.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the Third Quarter 2010-11 Budget Reforecast.

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

Nays: None

MOTION PASSES

C. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: PUBLIC SAFETY

28 Delaware REMOVED PER STAFF REQUEST

299 Sumner

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 299 Sumner is unsafe, substandard, a public nuisance and that it be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: CDBG Funds.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner Shepherd, second by Commissioner Spataro to concur with the Housing Board of Appeals notice and order to demolish 299 Sumner.

ROLL VOTE: Ayes: Warmington, Wisneski, Gawron, and Spataro

Nays: Wierengo, Carter, and Shepherd

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Spataro asked that the Community Relations Committee Meeting be cancelled for next Monday.

PUBLIC PARTICIPATION: Public comments received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:40 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commission
FROM: Department of Public Works
DATE: May 10, 2011
SUBJECT: Aggregates, Highway Maintenance Materials and Concrete

SUMMARY OF REQUEST:

Award bid to supply H1 and H2 limestone chip blend to Verplank Trucking Company

Award bid to supply road slag to Verplank Trucking Company

Award bid to supply Sylvax patching material to Superior Asphalt

Award bid for crack sealant to Surface Coatings Co.

Award bid to supply bituminous asphalt product to Asphalt Paving, Inc.

Award bid to supply screened top soil to Yellow Rose Transport

Award bid to supply 2NS sand to Jackson-Merkey Contractors, Inc.

Award bid to supply 7-sack mix concrete to Port City Redi-Mix

Award supply of Calcium Chloride 38% (road brine) and 32% (winter salting) to Great Lakes Chloride

FINANCIAL IMPACT:

\$361,114.50 based on quantities requested in bid at 2011 quotes.

BUDGET ACTION REQUIRED:

None; funds appropriated in several budgets.

STAFF RECOMMENDATION:

Recommend approval of bids as outlined in Summary of Request.

To: The City Commission Through The City Manager
From: Mohammed Al-Shatel Director of Public Works
Date: May 10, 2011
Subject: 2011 Aggregates, Highway Maintenance Materials, and Concrete

Purchases will be made from recommended bidder, contingent upon product availability, timely deliveries, and prices as quoted.

500 ton H1 & H2 Limestone Chip Blend (\$17.00 in 2010; \$8500.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$17.00 per ton, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$18.25 per ton, delivered

9,000 ton Road Slag 22-A Natural (\$11.25 in 2010; \$108,000.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$12.00 per ton, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$12.65 per ton, delivered

500 tons SylvaX Patching Materials – UPM-CP-7, or ASTM Specification C-136 #9 or Statite CP-6, or similar product (\$100.00 in 2010; \$51,500.00)

Superior Asphalt,	669 Century, SW, Grand Rapids, MI 49503	\$103.00 per ton, delivered
Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	\$105.00 per ton, picked up
Rieth-Riley Construction Co.	867 Egypt Valley, Ada MI 49301	\$105.00 per ton, delivered

50,000 pounds Crack Sealant (block form) (\$0.48 in 2010; \$24,500.00)

Surface Coatings Co.	2280 Auburn Road, Auburn Hills, MI 48326	\$0.49 per pound, delivered
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200 ton Bituminous Asphalt 4:12, Base (\$59.00 in 2010; \$12,200.00)

Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	\$61.00 per ton, picked up
Rieth-Riley Construction Co.	867 Egypt Valley, Ada MI 49301	\$51.00 per ton, picked up

1,000 ton Bituminous Asphalt 4:12, Top (\$60.00 in 2010; \$62,000.00)

Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	\$62.00 per ton, picked up
Rieth-Riley Construction Co.	867 Egypt Valley, Ada MI 49301	\$54.00 per ton, picked up

500 yards Screened Top Soil (\$9.75 in 2010; \$4,500.00)

Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$9.00 per ton, delivered
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$9.50 per cubic yard, delivered
Jackson-Merkey	555 W. Western, Muskegon, MI 49442	\$10.25 per cubic yard, delivered

500 ton 2NS Sand (\$4.16 in 2010; \$2,750.00)

Jackson-Merkey	555 W. Western, Muskegon, MI 49442	\$5.50per ton, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$6.10 per ton, delivered
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$8.50 per ton, delivered

Concrete mix as needed (7 Sack Mix \$81.00 in 2010, \$41,664.50)

Port City Redi-Mix	\$79.00 per cubic yard, 7 Sack Mix, delivered
1780 Sheridan Road, Muskegon, MI 49442	

Consumers Concrete	\$80.00 per cubic yard, 7 Sack Mix, delivered
4400 E. Evanston Avenue, Muskegon MI 49442	

**The 7-sack mix is the most commonly used product. It should be noted that concrete purchases may include several miscellaneous charges, including, but not limited to, hot water, chloride, small loads, second drops, winter price, and extra unload time.*

85,000 gallons Calcium Chloride 38% (road brine) (\$0.47 in 2010; \$39,950.00)

Great Lakes Chloride	1012 E. Freesoil, Free Soil, MI 49660	\$0.47 per gallon, spread
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15,000 gallons Calcium Chloride 32% (winter salting) (\$0.37 in 2010; \$5,550.00)

Great Lakes Chloride	1012 E. Freesoil, Free Soil, MI 49660	\$0.37 per gallon, storage
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Date: May 10, 2011
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
Laketon, Biedler to Park**

SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the reconstruction of Laketon Ave. from Biedler to Park. And approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the approved federal funds of \$537,100. The estimated total construction cost is \$700,000.

BUDGET ACTION REQUIRED:

Due to the short fall of street funds the City will use bond money for the match.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION _____

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF LAKETON AVENUE BETWEEN BIEDLER & PARK TOGETHER WITH OTHER NECESSARY RELATED WORK ITEMS AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK, ANN BECKER, TO EXECUTE SAID CONTRACT

Moved by _____ and supported by _____

Commissioner _____ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **11-5251** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Laketon Ave. between Biedler & Park** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **11-5251** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this _____ day of _____, 2011.

BY

Stephen J. Warmington, Mayor

ATTEST

Ann Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on _____, **2011**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Becker, City Clerk

STP

DAB

Control Section	STUL 61407
Job Number	104274
Project	STP 1161(015)
Federal Item No.	HH 7267
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	11-5251

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated April 18, 2011, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION

Reconstruction work along Laketon Avenue from Bielder Street to Park Street; including concrete pavement, storm sewer, concrete sidewalk, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION

Watermain work along Laketon Avenue from Bielder Street to Park Street; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

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

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

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

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

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

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

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$560,000, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

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

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

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

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

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

9. The REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection

of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

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

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

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

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

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

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

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

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

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

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

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

17. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

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

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

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

CITY OF MUSKEGON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



April 18, 2011

EXHIBIT I

CONTROL SECTION	STUL 61407
JOB NUMBER	104274
PROJECT	STP 1161(015)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$656,200	\$40,500	\$696,700

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$656,200	\$40,500	\$696,700
Less Federal Funds*	<u>\$537,100</u>	<u>\$ 0</u>	<u>\$537,100</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$119,100	\$40,500	\$159,600

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

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 \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent 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 10, 2011
To: Honorable Mayor and City Commission
From: Engineering
RE: Request to Submit Grant Applications for the reconstruction of;
Laketon between Park & Peck

SUMMARY OF REQUEST:

Authorize staff to submit a request for grant application to MDOT for TEDF-F funds to reconstruct Laketon Ave. from Park to Peck. The request is for \$375,000 and will require a match of up to \$150,000 which, if approved will be budgeted for in 2013, since the request is for the 2013 funding year.

FINANCIAL IMPACT:

A local share of \$150,000 match plus engineering costs is required.

BUDGET ACTION REQUIRED:

None at this time but will have to be budgeted for in 2013.

STAFF RECOMMENDATION:

Authorize staff to submit the application.

COMMITTEE RECOMMENDATION:

Date: 05/10/11
To: Honorable Mayor and City Commission
From: DPW
RE: Watermain Purchase

SUMMARY OF REQUEST: Authorize Staff to purchase 8" and 12" Watermain and appurtenances from ETNA Supply. The Watermain will be used to construct two Budgeted Watermain Projects using in - house work force and equipment. The projects are

- Leahy Street between Laketon and Larch.
- McGraft Street between Palmer and Montgomery.

FINANCIAL IMPACT: Total Cost \$ 17,453.02

BUDGET ACTION REQUIRED: None. Included in 2010 / 2011 Budget

STAFF RECOMMENDATION: Approve purchase from ETNA Supply

Water main projects on McGraft and Leahy

Leahy

BID TABULATIONS

CONTRACTOR ADDRESS CITY/ST/ZIP				East Jordan Iron Works 301 Spring Street East Jordan, MI 49727		Etna Supply 529 32ND St. SE Grand Rapids, MI 49548		HD Supply (Waterworks) 4901 Dewitt Rd. Canton, MI 48188	
LINE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	12" DI pipe	ft	292.00	\$ 25.73	\$ 7,513.16	\$ 23.79	\$ 6,946.68	\$ 32.53	\$ 9,498.76
2	6" DI pipe	ft	15.00	\$ 11.45	\$ 171.75	\$ 10.59	\$ 158.85	\$ 14.42	\$ 216.30
3	6" MJ valve	ea	1.00	\$ 395.18	\$ 395.18	\$ 360.18	\$ 360.18	\$ 400.76	\$ 400.76
4	Valve box "complete"	ea	1.00	\$ 138.00	\$ 138.00	\$ 135.00	\$ 135.00	\$ 154.39	\$ 154.39
5	12" x 6" MJ Tee	ea	1.00	\$ 291.90	\$ 291.90	\$ 271.25	\$ 271.25	\$ 305.45	\$ 305.45
6	12" x 12 MJ solid SLV	ea	1.00	\$ 198.08	\$ 198.08	\$ 184.06	\$ 184.06	\$ 207.27	\$ 207.27
7	12" x 45 MJ bend	ea	2.00	\$ 251.59	\$ 503.18	\$ 233.79	\$ 467.58	\$ 263.27	\$ 526.54
8	12" MJ Meggalug "complete"	ea	8.00	\$ 76.00	\$ 608.00	\$ 74.00	\$ 592.00	\$ 91.09	\$ 728.72
9	6" MJ megalug "complete"	ea	4.00	\$ 30.00	\$ 120.00	\$ 27.00	\$ 108.00	\$ 50.39	\$ 201.56
10				Total	\$ 9,939.25		\$ 9,223.60		\$ 12,239.75
13									
CONTRACTOR ADDRESS CITY/ST/ZIP				East Jordan Iron Works		Etna Supply		HD Supply (Waterworks)	
McGrath									
LINE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	8" DI TPG SLV	ea	1.00	\$ 1,482.29	\$ 1,482.29	\$ 1,204.86	\$ 1,204.86	\$ 1,237.02	\$ 1,237.02
2	8" MJ TPG valve	ea	1.00	\$ 828.18	\$ 828.18	\$ 746.50	\$ 746.50	\$ 897.14	\$ 897.14
3	Valve box "complete"	ea	2.00	\$ 138.00	\$ 276.00	\$ 135.00	\$ 270.00	\$ 154.39	\$ 308.78
4	8" x 6" MJ tee	ea	1.00	\$ 154.99	\$ 154.99	\$ 144.02	\$ 144.02	\$ 162.18	\$ 162.18
5	6" MJ valve	ea	1.00	\$ 395.18	\$ 395.18	\$ 360.18	\$ 360.18	\$ 400.76	\$ 400.76
6	8" DI pipe	ft	275.00	\$ 15.60	\$ 4,290.00	\$ 14.42	\$ 3,965.50	\$ 19.68	\$ 5,412.00
7	8" MJ SLV	ea	1.00	\$ 98.00	\$ 98.00	\$ 91.06	\$ 91.06	\$ 102.55	\$ 102.55
8	6" DI pipe	ft	15.00	\$ 11.45	\$ 171.75	\$ 10.59	\$ 158.85	\$ 14.42	\$ 216.30
9	1" corp	ea	3.00	\$ 30.31	\$ 90.93	\$ 30.00	\$ 90.00	\$ 33.40	\$ 100.20
10	1" curb stop	ea	3.00	\$ 71.54	\$ 214.62	\$ 60.00	\$ 180.00	\$ 74.14	\$ 222.42
11	Curb box	ea	3.00	\$ 28.09	\$ 84.27	\$ 55.00	\$ 165.00	\$ 28.02	\$ 84.06
12	1" copper tubing	ft	106.00	\$ 6.22	\$ 659.32	\$ 5.24008	\$ 555.45	\$ 5.82	\$ 616.92
14	8" MJ Meggalug "complete"	ea	5.00	\$ 40.00	\$ 200.00	\$ 38.00	\$ 190.00	\$ 47.51	\$ 237.55
15	6" MJ Meggalug "complete"	ea	4.00	\$ 30.00	\$ 120.00	\$ 27.00	\$ 108.00	\$ 50.39	\$ 201.56
16				Total	\$ 9,065.53		\$ 8,229.42		\$ 10,199.44
17									
18				Grand Total	\$ 19,004.78		\$ 17,453.02		\$ 22,439.19