CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 9, 2006

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. **Contract Renewal with Digital Spectrum Enterprises (DSE).** ASSISTANT CITY MANAGER
  - C. **2006 Water Treatment Chemical Bids**. WATER FILTRATION
  - D. **Approval of Contractor for Demolition of Structure at 280 Iona.** COMMUNITY & NEIGHBORHOOD SERVICES
  - E. **Lead Based Paint Abatement at 867 Williams.** COMMUNITY & NEIGHBORHOOD SERVICES
  - F. **Approval of Contractor for Completion of Rehabilitation of Structure at 867 Williams.** COMMUNITY & NEIGHBORHOOD SERVICES
  - G. **Consideration of Bids - Benton Street & Williams Street, Chestnut Street to Catawba Avenue (H1584).** ENGINEERING
  - H. **Agreement with Harbor Unitarian Universalist Congregation to Operate at the Farmers Market.** ASSISTANT CITY MANAGER
- PUBLIC HEARINGS:
  - A. **Request to Establish an Obsolete Property District - 1133 W. Western.** PLANNING & ECONOMIC DEVELOPMENT

B. **Request to Issue an Obsolete Property Certificate - 1133 W. Western.** PLANNING & ECONOMIC DEVELOPMENT

- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**

A. **Change Order - Hartshorn Marina Renovation Phase III.** ASSISTANT CITY MANAGER

B. **Intake Inspection.** WATER FILTRATION

C. **Resolution to Sell 247 E. Walton.** COMMUNITY & NEIGHBORHOOD SERVICES

D. **Consideration of Proposal to Construct 200' of 8" Main at Sherman and Beach.** ENGINEERING

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

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

- **ADJOURNMENT:**

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

Date: **May 9, 2006**

To: **Honorable Mayor and City Commissioners**

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

RE: **Approval of Minutes**

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, April 25, 2006.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 9, 2006

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, May 9, 2006.

Mayor Warmington opened the meeting with a prayer from Reverend Gerald Wahr from the McGraft Memorial Congregational Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

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

2006-41 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, April 25, 2006.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Contract Renewal with Digital Spectrum Enterprises (DSE). ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: To authorize the Mayor to sign a two-year contract (with the option to renew for a third) with Digital Spectrum Enterprise. Necessary discussion and follow-up has been pursued with the City Commission regarding this issue. The contract has been updated accordingly.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: This issue was discussed at the Commission

Worksession on April 10, 2006, and the Commission concurred with staff recommendation as outlined.

C. <u>2006 Water Treatment Chemical Bids</u>. WATER FILTRATION

SUMMARY OF REQUEST: Recommend endorsement of lowest responsible bidders to supply aluminum sulfate, sodium hypochlorite, and fluoride for the water filtration plant.

FINANCIAL IMPACT: Annual cost of $88,483 (based on average annual water pumped to mains).

BUDGET ACTION REQUIRED: None at this time. These chemicals are budgeted annually.

STAFF RECOMMENDATION: Staff recommends the Mayor and City Commission endorse the low bids received and the contract renewal and enter into contracts with US Aluminate, Rowell Chemical, and Lucier Chemical for aluminum sulfate, sodium hypochlorite, and fluoride respectively.

E. <u>Lead Based Paint Abatement at 867 Williams.</u> COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the bid with Statewide Abatement, 1720 N. Creston, North Muskegon, Michigan for the lead base paint abatement of the City-owned home at 867 Williams for $25,845. The only other bid received was from Specialty Builders PB Abatement Co. LLC, 2434 Annette, Muskegon, Michigan for $34,400.

After the lead base paint abatement is complete, the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2004 HOME budget and from program income produced by the Community and Neighborhood Services office.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Statewide Abatement.

COMMITTEE RECOMMENDATION: The Commission approved Community and Neighborhood Services office to purchase this home from the private market in 2004.

F. <u>Approval of Contractor for Completion of Rehabilitation of Structure at 867 Williams.</u> COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the contract with Specialty Builders PB Abatement Co., LLC Construction, 2434 Annette, Muskegon, Michigan for the completion of the rehabilitation of 867 Williams for $50,689. The structure was obtained by the City of Muskegon through the private market, in an effort to continue the neighborhood revitalization in the Angel neighborhood. After the final rehabilitation is completed, the property will be sold to a qualified family in accordance with the Community and Neighborhood Services offices established guidelines, continuing the City's aggressive neighborhood revitalization efforts.

The Community and Neighborhood Services office received three other proposals for this project:

Noble/Baldwin, Inc., 210 E. Broadway, Muskegon Heights - $61,558

Lewis Johnson Construction, 16076 Bonita, Grand Haven - $57,900

J2 Development & Construction Co., 109 E. Laketon, Muskegon - $55,217.96

FINANCIAL IMPACT: The funding for this project will be taken from the City's HOME funds from fiscal year 2004 and program income produced by the Community and Neighborhood Services office.

BUDGET ACTION REQUIRED: None required

STAFF RECOMMENDATION: To approve the Community and Neighborhood Services request.

COMMITTEE RECOMMENDATION: The Commission approved Community and Neighborhood Services office to obtain this home through the open market; and it was stated, at that time, that the home would be totally rehabilitated at a later date.

G. **Consideration of Bids - Benton Street & Williams Street, Chestnut Street to Catawba Avenue (H-1584).** ENGINEERING

SUMMARY OF REQUEST: Award the paving, using asphalt material, contract (H-1584) for Benton Street & Williams Street, Chestnut Street to Catawba Avenue to Jackson-Merkey Contractors, Inc. since they were the lowest bidder with a bid price of $102,956.78.

FINANCIAL IMPACT: The construction cost $102,956.78 plus engineering cost which is estimated at an additional 20%.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Award the contract to Jackson-Merkey Contractors, Inc.

H. **Agreement with Harbor Unitarian Universalist Congregation to Operate at the Farmers Market.** ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: To authorize the Mayor to sign a one-year agreement between the City of Muskegon and Harbor Unitarian Universalist Congregation to sell Fair Trade Coffee, baked goods, tea, soft drinks and bottle water at the Muskegon Farmers Market. The Church is a member of the Friends of the Market group that was recently organized to enhance the aesthetic appeal of the Market.

FINANCIAL IMPACT: None. Harbor Unitarian Universalist Congregation will pay the City 10% of sale.

BUDGET ACTION REQUIRED: None

STAFF/COMMITTEE RECOMMENDATION: The Leisure Services Board is scheduled to meet in July. In between meetings, the Director of Leisure Services Department is authorized to take action on such request and advise the body later. It is therefore, staff's recommendation that the Commission approves this request.

I. **Changes to Industrial Facility Tax Abatement Contract.** AFFIRMATIVE ACTION/COMMUNITY & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve changes to the Industrial Facility Tax abatement contract. The only change is in Section 1.3 with the addition of the number of 14% for minority employment.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the changes to the contract.

COMMITTEE RECOMMENDATION: The Equal Opportunity Committee has recommended the changes.

J. **City – Michigan Department of Transportation Agreement for Western Avenue, Third to Terrace Streetscape.** ENGINEERING

SUMMARY OF REQUEST: To approve the contract with Michigan Department of Transportation for streetscape (decorative concrete & street lights) work along Western Avenue from Third Street to Terrace Street (including all necessary related work) and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: Michigan Department of Transportation's participation of federal money is capped at $960,000 but not to exceed 80% of eligible cost. The estimated total construction cost (with engineering) of the project, is $1,195,000.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approve the agreement and resolution.

K. **Commission Computer Access.** CITY MANAGER

Motion by Commissioner Spataro, second by Commissioner Carter to approve the Consent Agenda with the exception of item D.

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

Warmington

Nays: None

MOTION PASSES

2006-42 ITEM REMOVED FROM THE CONSENT AGENDA:

D. Approval of Contractor for Demolition of Structure at 280 Iona. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the contract with Press's LLC, 8081 Holton Duck Lake Road, Holton, Michigan for the demolition of the City-owned home at 280 Iona for $3,730. Press's was the only contractor that submitted a bid for the project. After the demolition is completed, the Community and Neighborhood Services office will solicit bids from qualified builders to construct a new home on the site, in an effort to continue the City's assertive neighborhood revival efforts.

FINANCIAL IMPACT: The funding for the demolition will be taken from the City's HOME funds from fiscal year 2005 and program income.

BUDGET ACTION REQUIRED: None required.

STAFF RECOMMENDATION: To approve the Community and Neighborhood Services request.

COMMITTEE RECOMMENDATION: The Commission approved Community and Neighborhood Services office to obtain 280 Iona from the State of Michigan for the original goal of rehabilitating the structure. But, after further study, it has been determined that it will be in the City's best interest to demolish the structure and rebuild.

Motion by Commissioner Shepherd, second by Commissioner Carter to approve the contract with Press's for the demolition of 280 Iona.

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

Nays: None

MOTION PASSES

2006-43 PUBLIC HEARINGS:

A. Request to Establish an Obsolete Property District - 1133 W. Western. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Kirksey Investment Corporation, 1204 W. Western, Muskegon, MI 49441, has requested the establishment of an Obsolete Property District. The district would be located at 1133 W. Western Avenue, Muskegon, MI. This project will consist of rehabbing this building into a warehousing facility. Total capital investment for this project is $500,000.

FINANCIAL IMPACT: If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None

The Public Hearing opened at 5:43 p.m. to hear and consider any comments from the public. Joel Fitzpatrick and Dennis Kirksey explained the item and answered Commissioner's questions. No comments were heard from the public.

Motion by Commissioner Carter, second by Commissioner Spataro to close the Public Hearing at 6:16 p.m. and establish an Obsolete Property District at 1133 W. Western.

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

Nays: Davis and Shepherd

MOTION PASSES

B. Request to Issue an Obsolete Property Certificate - 1133 W. Western. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Kirksey Investment Corporation, 1204 W. Western, Muskegon, 49441 has requested the issuance of an Obsolete Property Certificate for the property located at 1133 W. Western, Muskegon, MI. Total capital investment for this project is $500,000. The project consists of converting the building into a warehousing facility. Because of the amount of investment, the applicant is eligible for a 12-year certificate.

FINANCIAL IMPACT: If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None

The Public Hearing opened at 6:17 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Commissioner Spataro, second by Commissioner Carter to close the Public Hearing at 6:18 p.m. and approve the request for an Obsolete Property Certificate for 1133 W. Western.

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

Nays: Shepherd

MOTION PASSES

2006-44 NEW BUSINESS:

A. <u>Change Order - Hartshorn Marina Renovation Phase III.</u> ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: To post authorize staff's approval (as provided for in the City Purchasing Policy) of Change Order #3 with Great Lakes Docks and Marina, the Project Contractor, in the amount of $52,475.70 as payment for the repair/rebuilding of the head pier at the east end of the marina docks. While we rarely exercise the authority to pre-approve Change Orders, when we do, it is often due to the timing of the work required to be done – as indeed was the reason for this pre-approval by staff. Completion of this portion of the project will be by the end of May 2006. Payment will also have to be made to Abonmarche Group, the Consulting firm overseeing the project, for necessary drawing and drafting tasks associated with this work.

FINANCIAL IMPACT: $52,475.70

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To authorize staff to approve Change Order #3 with Great Lakes Docks and Marina.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to authorize staff to approve Change Order #3 with Great Lakes Docks and Marina.

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

Nays: None

MOTION PASSES

B. <u>**Intake Inspection.**</u> WATER FILTRATION

SUMMARY OF REQUEST: To contract with an underwater contractor to inspect the intake conduit, chemical application piping, intake crib, and replace the wooden louvers on the crib structure.

FINANCIAL IMPACT: Project cost of $48,676.

BUDGET ACTION REQUIRED: Project budgeted at $32,000. Additional cost will be addressed by the Water Fund Capitol Improvements budget and identified in the next budget reforecast.

STAFF RECOMMENDATION: Staff recommends the Mayor and City Commissioners approve entering into a contract with Onyx Underwater Services, Inc., with consideration of the bidding irregularity for additional material removal, at a cost of $48,676.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to approve entering into a contract with Onyx Underwater Services, Inc., with consideration of the bidding irregularity for additional material removal, at a cost of $48,676.

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

Nays: None

MOTION PASSES

C. <u>Resolution to Sell 247 E. Walton.</u> COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the resolution to sell the City-owned house at 247 E. Walton to Ms. Doris Harris, of 1259 McLaughlin, Muskegon, for the expected appraised value of $145,000 minus the $49,000 subsidy.

The house at 247 E. Walton is a part of the second phase of the Walton Street Renaissance AKA Hilltop View, which was started last summer and will be totally completed in the next 30 days. The Hilltop View project was the first time that the Community and Neighborhood Services office had attempted a development, which consisted of more than one property. With the sale of this property at 247 E. Walton five of the six homes in the development will have been purchased.

The Walton Street project is a partnership between the City of Muskegon, Fifth Third Bank and Neighborhood Investment Corporation. It is the hope of all those involved in the Walton Street Renaissance project that it will be an anchor for additional redevelopment in the adjacent area as we continue to prepare and cultivate our community for 21st Century living.

FINANCIAL IMPACT: The program income derived from this transaction will be deposited in the City's HOME account minus the funds owed Fifth Third Bank that was used to construct the new street in the area.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and the sale of 247 Walton to Ms. Doris Harris.

COMMITTEE RECOMMENDATION: The Walton Street Project was approved by both the City Commission and the Land Reutilization Committee.

Motion by Commissioner Shepherd, second by Commissioner Carter to approve the resolution to sell 247 E. Walton to Ms. Doris Harris

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

Nays: None

MOTION PASSES

D. <u>Consideration of Proposal to Construct 200' of 8" Main at Sherman and Beach.</u> ENGINEERING

SUMMARY OF REQUEST: Authorize staff to accept Jackson Merkey's proposal to place approximately 200' of 8" water main section along with other necessary items to connect the existing 6" dead-end main on Sherman to that being constructed to serve the Idlewild area. The proposed section of main will provide a direct connection to the 30" main on the east side of Beach and in the process improve the flow in the mains within the area west of Beach and north of Sherman. Jackson Merkey is being recommended for two main reasons:

1. The proposed cost of $21,726 is very reasonable for the amount of work involved
2. Jackson Merkey is already on site for the Idlewild project and therefore eliminating a possible additional cost for mobilization

FINANCIAL IMPACT: The construction cost of $21,726.

BUDGET ACTION REQUIRED: None, the cost will be covered by the $100,000 budgeted for "Water Main Replacement Projects".

STAFF RECOMMENDATION: Authorize staff to accept Jackson Merkey's proposal for the work to be done in May of 2006.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the construction.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commission commented on various items.

PUBLIC PARTICIPATION: Various comments were heard from the public.

ADJOURNMENT: The City Commission Meeting adjourned at 7:08 p.m.

Respectfully submitted,

Linda Potter

Linda Potter, CMC
Deputy City Clerk

CITY COMMISSION MEETING May 9, 2006
Agenda Item # ________

COVER PAGE

To:	Mayor and City Commissioners
From:	Lee J. Slaughter, Assistant City Manager
Date:	May 1, 2006
Re:	Contract Renewal with Digital Spectrum Enterprises (DSE)

SUMMARY OF REVIEW

To authorize the Mayor to sign a two-year contract (with the option to renew for a third) with Digital Spectrum Enterprise. Necessary discussion and follow-up has been pursued with the City Commission regarding this issue. The attached Contract has been updated accordingly.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF/COMMITTEE ACTION:

This issue was discussed at the Commission Work session on April 10, 2006 and the Commission concurred with staff recommendation as outlined.

MEMORANDUM

To:	Mayor Warmington and City Commissioners
From:	Lee J. Slaughter, Acting City Manager
Date:	April 4, 2006
Re:	Digital Spectrum Enterprises (DSE) Annual Report

Attached please find DSE's Annual Report to the City as required by the contract. The contract with DSE is a one-year contract which expires May 31, 2006. The one year trial period was successful and without insurmountable challenges. I am supportive of DSE's request to renew the contract for a more extended period of time. This item is on your April 10, 2006 work session agenda for discussion and further direction.

Summary Review and Comments -- DSE Annual Report

Contract Duration: Ms. Bradsburg is requesting a three-year contract. Staff recommends entering into a two-year contract with the option to renew for another year.

Possible Challenge from Comcast: staff does not share Ms. Bradsburg assertion that threats from Comcast towards DSE might be non-existence.

Current Franchise Agreement with Comcast: The Agreement is for 25-year. It was signed 12/8/87 and the License issued 8/2/88. Technically, the Agreement expires in 2012 and not 2014 as indicated in the report.

Commercial Advertising: Ms. Bradsburg is requesting permission from the City for DSE to carry Commercial Advertising. Staff does not recommend granting this request. We are confident that DSE can continue to function effectively with the use of non-commercial advertising.

Financial Reporting: The current contract calls for DSE to provide an annual report *prior to April 15.* Ms. Bradsburg would like for the date to be set at June 15. Staff recommends April 30th as the new due date. Due to this recommended change, it is further recommended that the contract is effective July 1 -- this will allow for the recommended 60-day contract renewal period as advised by the City Attorney and supported by other PEG Channel agreements.

Please feel free to call if you have questions.

Thank you.

C: Bryon Mazade
Ann Bradsburg

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

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

Civil Service
231/724-6716
FAX/724-4055

Clerk
231/724-6705
FAX/724-4178

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

Engineering
231/724-6707
FAX/727-6904

Finance
231/724-6713
FAX/724-6768

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

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

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

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

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

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

Neigh. & Const. Services
231/724-6715
FAX/726-2501

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

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

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

Treasurer
231/724-6720
FAX/724-6768

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

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

MUSKEGON

West Michigan's Shoreline City

June 23, 2006

Ms. Ann Bratsburg, President
Digital Spectrum Enterprises of West Michigan, Inc.
105 W. Sherman Boulevard
Muskegon Heights, MI 49444

Dear Ms. Bratsburg:

Enclosed for your file is an original, fully executed Agreement between Digital Spectrum Enterprises of West Michigan, Inc. (DSE) and the City of Muskegon, by which DSE will operate the Government Access Channel.

Please feel free to contact me should you have any questions.

Sincerely yours,

CITY OF MUSKEGON

Otterlee J. Slaughter
Assistant City Manager

/pb

Enc.

cc: City Clerk (with enclosure)

pb/OJS AGREEMENT, CITY & DIGITAL SPECTRUM ENTERPRISES 062306

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

AGREEMENT BETWEEN CITY OF MUSKEGON
AND
DIGITAL SPECTRUM ENTERPRISES OF WEST MICHIGAN, INC.

This Agreement is made this 9th day of May, 2006, by and between the **City of Muskegon**, a Michigan municipal corporation ("City") and **Digital Spectrum Enterprises of West Michigan, Inc.**, a Michigan nonprofit corporation ("DSE"), who agree as follows:

RECITALS

1. The City desires to provide support for the use of cable television, public, educational, and government ("PEG") access channels provided pursuant to federal law.

2. The City has granted a franchise to Comcast, as successor of Taft Cable Partners and Robert Fulk, Ltd. ("Cable Company") to operate a cable television system in the City of Muskegon ("Franchise Agreement").

3. The Franchise Agreement with Cable Company provides that certain channel capacity be provided for PEG access, including a government access channel for use by area municipal governments served by Cable Company (currently cable channel 77) ("Government Access Channel").

4. DSE, as the access management entity designated by the City, has indicated its interest in serving the community by providing PEG access programming and services on the Government Access Channel.

5. In exchange for broadcasting City events free of charge (as explained in Section 1.B below), the City agrees to allow DSE to use the Government Access Channel to broadcast programming consistent with PEG channel purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES: Pursuant to this Agreement, DSE shall provide the following services:

A. *OPERATE THE GOVERNMENT ACCESS CHANNEL.* Operate the Government Access Channel for local government and community access programming purposes in a manner consistent with the principles set forth in this Agreement and the Franchise Agreement between the City and Cable Company, with the primary purpose being to administer, coordinate and assist the City of Muskegon in providing local government programming.

B. *BROADCASTING LOCAL GOVERNMENT PROGRAMMING.* Produce and broadcast, at no expense to the City, City Commission meetings and the meetings of other committees, boards, and commissions that the City might require, and other reasonable programs or issues that the City Commission may deem necessary.

C. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel and file such policies and procedures with the City.

D. *COMPLIANCE WITH LAWS, RULES, AND REGULATIONS.* Administer the Government Access Channel and facilities in compliance with applicable laws, rules, regulation, and in compliance with the Franchise Agreement between the City and Cable Company.

E. *TRAINING.* Train City residents, and when requested, City and school or college employees in the techniques of video production, and provide technical advice in the execution of productions.

F. *SPECIAL NEEDS GROUPS.* Support special needs groups, including but not limited to the hearing impaired, in program production through training and other means.

G. *OTHER ACTIVITIES.* Undertake other PEG access programming activities and services as deemed appropriate by DSE and consistent with the obligation to facilitate and promote PEG access programming and provide non discriminatory access.

SECTION 2. CHANNELS OPEN TO PUBLIC: DSE agrees to keep the Government Access Channel open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither the City, nor the Cable Company, nor DSE shall have the authority to control the content of programming placed on the Government Access Channel so long as such programming is lawful. Provided that, nothing herein shall prevent DSE, the City, or Cable Company from producing or sponsoring programming, prevent the City or the Cable Company from underwriting programming, or prevent DSE, the City or Cable Company from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable laws and rules for use of PEG channels. DSE may develop and enforce policies and procedures which are designed to promote local use of the channel and make programming accessible to the viewing public, consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 3. INDEMNIFICATION: DSE shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, however the same may be caused, whether directly or indirectly arising or resulting from any alleged acts or omission of DSE, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

DSE shall indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorneys' fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from DSE use of channels, funds, equipment, facilities or staff granted under this Agreement or the Franchise Agreement.

SECTION 4. COPYRIGHT.

A. *CLEARANCE.* Before cablecasting video transmissions, DSE shall require all users to agree in writing that they shall make all appropriate arrangements to obtain 1) all rights to all material cablecast and 2) clearance from broadcast stations, networks, sponsors, music licensing organizations' representatives, and any and all other persons as may be necessary to transmit their program material over the Government Access Channel. DSE shall maintain, for the applicable statute of limitations period, copies of all such user agreements for the City's inspection, upon reasonable notice by City.

B. *OWNERSHIP.* The City shall own the copyright of any programs that the City requests DSE to produce. Copyright of all other programming shall be held by the person(s) who produces the program.

SECTION 5. INSURANCE: DSE shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by DSE.

A. *COMPREHENSIVE LIABILITY INSURANCE.* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be: (1) bodily injury including death, $1,000,000 for each person, each occurrence and aggregate; (2) property damage, $1,000,000 for each occurrence and aggregate.

B. *EQUIPMENT INSURANCE.* Insurance shall be maintained on all equipment and facilities, including fixtures, to replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire, or natural catastrophe. The City shall be shown as lien holder on all policies.

C. *WORKER'S COMPENSATION.* Full Worker's Compensation Insurance and Employer's Liability with limits as required by Michigan law, provided through an insurance carrier satisfactory to the City.

D. *CABLECASTER'S ERRORS AND OMMISION INSURANCE.* Insurance shall be maintained to cover the content of productions which are cablecast on the Government Access Channel in at least the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.

E. *CITY AS CO-INSURED OR ADDITIONAL INSURED.* The City shall be named as a co-insured or additional insured on all aforementioned insurance coverages. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or DSE without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the City, its officers, agents, employees, or volunteers shall be in excess of the DSE insurance and shall not contribute to it.

F. *NOTIFICATION OF COVERAGE.* DSE shall file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation; (2) equipment insurance upon the acquisition of any equipment; (3) cablecaster's error and omission insurance within thirty (30) days of the cablecasting of programming on the Government Access Channel.

SECTION 6. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

A. DSE shall not discriminate against any person, employee or applicant for employment or contract work on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap.

B. DSE shall not discriminate in the delivery of services on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap.

SECTION 7. INDEPENDENT CONTRACTOR: It is understood and agreed that DSE is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and DSE. If in the performance of this Agreement any third persons are employed by DSE, such persons shall be entirely and exclusively under the control, direction and supervision of DSE. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment, shall be determined by DSE and the City shall have no right or authority over such persons or terms of employment.

SECTION 8. ASSIGNMENT AND SUBLETTING: Neither this Agreement nor any interest herein shall be assigned or transferred by DSE, except as expressly authorized in writing by the City.

SECTION 9. ANNUAL REPORTS: April 30 of each year, DSE shall submit to the City an annual report for the preceding fiscal year (January 1 – December 31). This report shall contain, at a minimum, the following information:

A. Statistics on programming and services provided;

B. Current and complete listing of DSE's Board of Directors;

C. Year-end financial statements audited by an independent certified public accountant.

SECTION 10. RECORDS, FISCAL AUDIT:

A. DSE shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

B. Upon reasonable request from the City, DSE shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.

SECTION 11. ANNUAL PLAN AND BUDGET:

A. On or before July 30 of each year in which this Agreement is in effect, DSE shall provide to the City an Annual Plan and Budget outlining activities and programs planned for the following fiscal year. Such plan shall contain:

1. A statement of anticipated number of hours of local original PEG access programming;

2. Training classes to be offered and frequency of classes; and

3. Other access activities planned by DSE.

SECTION 12. FUNDING FROM OTHER SOURCES: DSE may, during the course of this Agreement, receive funds from other sources, including, but not limited to, fundraising activities. DSE may generate funding for programming through program underwriting and sponsorship in a manner consistent with federal, state, or local non-commercial PEG channel rules and regulations.

SECTION 13. TERM OF AGREEMENT.

A. This Agreement shall be for a period of two years commencing July 1, 2006 and ending June 30, 2008, unless terminated earlier, as provided in this Agreement. The Agreement also provides the option to renew for another year (a third year), per city review.

B. At the option of the City, this Agreement will be renewed for one additional year. Notice of intent to extend the Agreement must be given by either party, City or DSE, no less than sixty (60) days prior to the expiration of the Agreement.

SECTION 14. TERMINATION OF AGREEMENT/TRANSFER OF ASSETS:

A. The City shall have the right upon sixty (60) days written notice to DSE to terminate this Agreement for:

1. Breach of any provision of this Agreement by DSE;

2. Malfeasance, misfeasance, and/or misappropriation of public funds;

3. Notice from Cable Company (and City verification) that DSE is engaging in commercial advertising and/or fundraising in a manner inconsistent with PEG channels; or

3. Loss of 501(c)(3) status by DSE.

B. DSE may avoid termination by curing any such breach to the satisfaction of the City within thirty (30) days of notification or within a time frame agreed to by the City and DSE. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

SECTION 15. TIME: Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 16. COOPERATION: Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 17. APPLICABLE LAW: This Agreement shall be interpreted and enforced under the laws of the State of Michigan.

SECTION 18. NOTICES: All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

TO: CITY OF MUSKEGON
Attn: Lee Slaughter
Assistant City Manager
933 Terrace Street
Muskegon, MI 49442

TO: DIGITAL SPECTRUM ENTERPRISES
Attn: ______________
105 W Sherman Blvd
Muskegon, MI 49444

Any party may change its address for notice by written notice to the other party at any time.

SECTION 19. ENTIRE AGREEMENT: This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

[signatures appear on following page]

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

CITY OF MUSKEGON, a Michigan municipal corporation

By: ______________________________
Stephen J. Warmington
Its Mayor

And: Gail A. Kundinger
Gail A. Kundinger, MMC
Its Clerk

DIGITAL SPECTRUM ENTERPRISES OF WEST MICHIGAN, INC., a Michigan nonprofit corporation

By: Ann Bratsburg
Name ANN BRATSBURG

Contract Revised 5/8/06
by Lee Slaughter, Asst. City Mgr.

ACORD. CERTIFICATE OF LIABILITY INSURANCE

CSR DIGIT-1

DATE (MM/DD/YYYY) 06/22/06

PRODUCER

Ippel Insurance Agency, Inc.
317 S. Beechtree St.
Grand Haven MI 49417
Phone: 616-846-3741 Fax: 616-846-6510

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

INSURED

DIGITAL SPECTRUM ENTERPRISES
of West Mich
105 W. Sherman
Muskegon Hts MI 49444

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Home-Owners Insurance	26638
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PROJECT [ ] LOC	16392803-06	06/06/06	06/06/07	EACH OCCURRENCE	$ 1000000
						DAMAGE TO RENTED PREMISES (Ea occurence)	$ 300000
						MED EXP (Any one person)	$ 10000
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$ 2000000
						PRODUCTS - COMP/OP AGG	$ 2000000
		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	$
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY [ ] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE RETENTION $				EACH OCCURRENCE	$
						AGGREGATE	$
							$
							$
							$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER	
						E.L. EACH ACCIDENT	$
						E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

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

E&O Certificate to follow from issuing company
City of Muskegon is additional insured on the general liability

CERTIFICATE HOLDER

MUSKCH-

CITY OF MUSKEGON
933 TERRACE ST
MUSKEGON, MI 49440
FAX# 231-722-1214

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Martin J. Ippel

JUN 2 2 2006

SPECIAL RISKS

RECEIVED

JUN 2 1 2006

MUSKEG...

CERTIFICATE OF INSURANCE

6/16/2006

PRODUCER
IPPEL INSURANCE
317 S BEECHTREE
GRAND HAVEN MI 49417

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.

COMPANIES AFFORDING COVERAGE

INSURED
ANN BRATSBURG DBA:
D S ENTERPRISES OF WEST MICHIGAN , INC.
105 W. SHERMAN BLVD
MUSKEGON, MI 49444-1468

COMPANY LETTER
A LANDMARK AMERICAN INSURANCE COMPANY
B
C
D
E

COVERAGES

THIS IS TO CERTIFY THAT 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.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS	
	☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCURRENCE ☐ OWNER'S & CONTRACTORS PROTECTIVE ☐				GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (ANY ONE FIRE) MEDICAL EXPENSE (ANY ONE PERSON)	\$ \$ \$ \$ \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☐ GARAGE LIABILITY ☐				CSL BODILY INJURY (PER PERSON) BODILY INJURY (PER ACCIDENT) PROPERTY DAMAGE	\$ \$ \$ \$
	EXCESS LIABILITY ☐ ☐ OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$	AGGREGATE \$
A	OTHER MEDIA PERILS POLICY FILM & PROGRAM PRODUCER	LHR709883	05-30-2006	05-30-2007	\$ 1,000 EACH CLAIM \$ 1,000 AGGREGATE LIMIT	

INFORMATION

CERTIFICATE HOLDER

CITY OF MUSKEGON
P.O. BOX 536
MUSKEGON, MI 49443

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEROF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

CERTIFICATE # SRH

Date: **May 9, 2006**

To: **Honorable Mayor and City Commission**

From: **Water Filtration Plant**

RE: **2006 Water Treatment Chemical Bids**

SUMMARY OF REQUEST:

Recommend endorsement of lowest responsible bidders to supply aluminum sulfate, sodium hypochlorite, and fluoride for the water filtration plant

FINANCIAL IMPACT:

Annual cost of $88,483.00 (based on average annual water pumped to mains).

BUDGET ACTION REQUIRED:

None at this time. These chemicals are budgeted annually.

STAFF RECOMMENDATION:

Staff recommends the Mayor and City Commission endorse the low bids received and the contract renewal and enter into contracts with US Aluminate, Rowell Chemical, and Lucier Chemical for aluminum sulfate, sodium hypochlorite, and fluoride respectively.

MEMORANDUM

5/1/06

TO: **M. AL-SHATEL – DEPUTY DPW**

FROM: **R. VENEKLASEN**

RE: **CHEMICAL BIDS – WATER FILTRATION**

BACKGROUND

In 1996 the Water Filtration Plant began the process of competitively bidding water treatment chemicals jointly with the cities of Grand Haven, Grand Rapids, Wyoming and Holland. The groups' bids are commonly addressed as the "West Michigan Cooperative Purchasing Group". Recently Muskegon Heights has joined in this cooperative purchasing group. The original bids (1996) allowed for contract renewal in two or three year intervals.

HISTORICAL CHEMICAL COSTS

This process has worked in the City's favor as the cost for chemicals has remained low over the years and increases have been modest.

YEAR	ALUMINUM SULFATE	CHLORINE	FLUORIDE
1996	136.29	395.00	138.80
1997	125.00	332.00	129.00
1998	125.00	332.00 (gaseous chlorine)	129.00
1999	125.00	107.67 (sodium hypochlorite)	141.50
2000	136.50	107.67	141.50
2001	136.50	107.20	145.00
2002	136.50	107.20	142.30
2003	136.50	107.20	142.30
2004	146.94	98.00	146.30

Historical annual average chemical use in tons, based on annual average water pumpage is:

CHEMICAL	TONS
Aluminum Sulfate	210
Sodium Hypochlorite	300
Fluoride	70

CHEMICAL BIDDING FOR 2006

The bidding process is performed by the City of Grand Rapids (aluminum sulfate and fluoride) and the City of Holland (hypochlorite) purchasing departments with bidding solicited for the respective City and the West Michigan Cooperative.

The chemical bids for the West Michigan Cooperative Purchase in 2006 are as follows:

Fluoride $230.00
  Lucier Chemical Industries, Ltd. (LCI)
  Jacksonville Beach, FL
Aluminum Sulfate
  US Aluminate $146.94
  Baltimore, MD
Sodium Hypochlorite $138.42
  Rowell Chemical Corp.
  Lisle, IL

Commission Meeting Date: May 9, 2006

Date: **May 2, 2006**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Lead Based Paint abatement at 867 Williams**

SUMMARY OF REQUEST: To approve the bid with Statewide Abatement, 1720 N. Creston North Muskegon, Michigan for the Lead Base Paint abatement of the city-owned home at 867 Williams for $25,845. The only other bid received was from Specialty Builders PB Abatement CO. LLC 2434 Annette Muskegon, Michigan ($34,400)

After the lead base paint abatement is complete the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2004 HOME budget and from program income produced by the Community and Neighborhood Services office.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Statewide Abatement.

COMMITTEE RECOMMENDATION: The Commission approved for the Community and Neighborhood Services office to purchase this home from the private market in 2004.


RENEWING OUR CITY
BLOCK BY BLOCK

Commission Meeting Date: May 9, 2006

Date: **May 2, 2006**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Approval of contractor for completion of Rehabilitation of structure at 867 Williams**

SUMMARY OF REQUEST: To approve the contract with Specialty Builders PB Abatement Co., LLC Construction 2434 Annette Muskegon, Michigan for the completion of the rehabilitation of 867 Williams for **Fifty Thousand Six Hundred Eighty Nine ($50,689)**. The structure was obtained by the City of Muskegon through the private market, in an effort to continue the neighborhood revitalization in the Angel neighborhood. After the final rehabilitation is completed the property will be sold to a qualified family in accordance with the Community and Neighborhood Services offices established guidelines, continuing the City's aggressive neighborhood revitalization efforts.

The Community and Neighborhood Services office received three other proposals for this project Noble/Baldwin Inc., 210 E. Broadway Muskegon Heights ($61,558), Lewis Johnson Construction, 16076 Bonita Grand Haven ($57,900) J2 Development and Construction Co., 109 E. Laketon Muskegon ($55.217.96)

FINANCIAL IMPACT: The funding for this project will be taken from the City's HOME funds from fiscal year 2004 and program income produced by the Community and Neighborhood Services office.

BUDGET ACTION REQUIRED: None required

STAFF RECOMMENDATION: To approve the Community and Neighborhood Services request.

COMMITTEE RECOMMENDATION: The commission approved for the Community and Neighborhood Services office to obtain this home through the open market and it was stated at that time that the home would be totally rehabilitated at a later date.


RENEWING OUR CITY
BLOCK BY BLOCK

Date: May 9, 2006

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Consideration of Bids
Benton St. & Williams St., Chestnut St. to Catawba Ave. (H1584)

SUMMARY OF REQUEST:

Award the paving, using asphalt material, contract (H-1584) for Benton St. & Williams St, Chestnut St. to Catawba Ave. to Jackson-Merkey Contractors, Inc. since they were the lowest, see attached bid tabulation, bidder with a bid price of $102,956.78.

FINANCIAL IMPACT:

The construction cost $102,956.78 plus engineering cost which is estimated at an additional 20%.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Award the contract to Jackson-Merkey Contractors, Inc.

COMMITTEE RECOMMENDATION:

H-1584 , S-591 WILLIAMS ST. & BENTON AVE. , CHESTNUT ST. TO CATAWBA AVE.

BID TABULATION 04/25/06

	CONTRACTOR ADDRESS CITY/ST/ZIP			ENGINEER'S ESTIMATE		JACKSON-MERKEY 555 E WESTERN AVE MUSKEGON MI 49441		MCCORMICK SAND 5430 RUSSELL RD TWIN LAKE, MI 49457		BRENNER EXCAVATING 2841 132ND AVE. HOPKINS, MI 49328		FELCO CONTRACTORS 856 PULASKI AVE. MUSKEGON, MI 49441		DOUBLE L ENTERPRISES 5215 INDUSTRIAL PK RD MONTAGUE, MI 49437		KAMMINGA & ROODVOETS 3435 BROADMOOR GRAND RAPIDS, MI 49512		WADEL STABILIZATION 2500 N. OCEANA DR. HART, MI 49420	
	ITEM OF WORK	UNIT	QTY	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE
1	ADJUST MANHOLE CASTINGS	EACH	4	$ 400.00	$1,600.00	$ 390.00	$ 1,560.00	$ 450.00	$ 1,800.00	$ 400.00	$ 1,600.00	$ 300.00	$ 1,200.00	$ 250.00	$ 1,000.00	$ 275.00	$ 1,100.00	$ 425.00	$ 1,700.00
2	AGGREGATE BASE COURSE 22A @ 6" C.I.P.	S.YD.	2298.0	$ 5.60	$12,868.80	$ 5.25	$ 12,064.50	$ 4.40	$ 10,111.20	$ 6.00	$ 13,788.00	$ 6.00	$ 13,788.00	$ 5.40	$ 12,409.20	$ 5.50	$ 12,639.00	$ 5.50	$ 12,639.00
3	AGGREGATE BASE COURSE 22A C.I.P.	TON	8.0	$ 45.00	$360.00	$ 17.50	$ 140.00	$ 13.00	$ 104.00	$ 10.00	$ 80.00	$ 45.00	$ 360.00	$ 15.60	$ 124.80	$ 24.00	$ 192.00	$ 30.00	$ 240.00
4	BITUMINOUS LEVELING MIX 3C @ 165#/S.Y.	TON	208.0	$ 50.00	$10,400.00	$ 48.00	$ 9,984.00	$ 51.00	$ 10,608.00	$ 49.00	$ 10,192.00	$ 49.00	$ 10,192.00	$ 49.45	$ 10,285.60	$ 48.00	$ 9,984.00	$ 49.45	$ 10,285.60
5	BITUMINOUS TOP MIX 4C @ 165#/S.Y.	TON	208.0	$ 50.00	$10,400.00	$ 53.40	$ 11,107.20	$ 56.75	$ 11,804.00	$ 54.00	$ 11,232.00	$ 55.00	$ 11,440.00	$ 54.40	$ 11,315.20	$ 53.40	$ 11,107.20	$ 54.40	$ 11,315.20
6	CATCH BASIN CASTING EAST JORDAN #7045 OR EQUAL	EACH	4.0	$ 700.00	$2,800.00	$ 675.00	$ 2,700.00	$ 650.00	$ 2,600.00	$ 400.00	$ 1,600.00	$ 500.00	$ 2,000.00	$ 659.00	$ 2,636.00	$ 600.00	$ 2,400.00	$ 530.00	$ 2,120.00
7	CATCH BASIN FLAT TOP WITH 2'-0" SUMP.	EACH	4.0	$ 1,350.00	$5,400.00	$ 1,245.00	$ 4,980.00	$ 1,045.00	$ 4,180.00	$ 800.00	$ 3,200.00	$ 1,200.00	$ 4,800.00	$ 1,100.00	$ 4,400.00	$ 1,000.00	$ 4,000.00	$ 1,300.00	$ 5,200.00
8	CONCRETE APPROACH, 6", STANDARD	S.YD.	270.0	$ 32.00	$8,640.00	$ 22.70	$ 6,129.00	$ 25.60	$ 6,912.00	$ 36.00	$ 9,720.00	$ 32.00	$ 8,640.00	$ 25.00	$ 6,750.00	$ 32.00	$ 8,640.00	$ 26.10	$ 7,047.00
9	CONCRETE CURB AND GUTTER, STANDARD DETAIL 1	L.FT.	1807.0	$ 10.00	$18,070.00	$ 8.60	$ 15,540.20	$ 9.70	$ 17,527.90	$ 10.00	$ 18,070.00	$ 13.00	$ 23,491.00	$ 13.00	$ 23,491.00	$ 12.50	$ 22,587.50	$ 9.80	$ 17,708.60
10	CONC. SIDEWALK 4"	SQ.FT.	277.5	$ 3.00	$832.50	$ 5.25	$ 1,456.88	$ 5.80	$ 1,609.50	$ 5.50	$ 1,526.25	$ -	$ -	$ 2.50	$ 693.75	$ 3.00	$ 832.50	$ 5.50	$ 1,526.25
11	CONCRETE SIDEWALK 6"	S.FT.	1052.0	$ 4.50	$4,734.00	$ 2.50	$ 2,630.00	$ 2.90	$ 3,050.80	$ 3.50	$ 3,682.00	$ 3.50	$ 3,682.00	$ 2.25	$ 2,367.00	$ 4.00	$ 4,208.00	$ 2.90	$ 3,050.80
12	EROSION CONTROL,INLET PROTECTION,GEO&STONE	EACH	6.0	$ 50.00	$300.00	$ 140.00	$ 840.00	$ 50.00	$ 300.00	$ 25.00	$ 150.00	$ 300.00	$ 1,800.00	$ 200.00	$ 1,200.00	$ 50.00	$ 300.00	$ 50.00	$ 300.00
13	MACHINE GRADING MODIFIED	STA.	8.8	$ 1,500.00	$13,200.00	$ 1,040.00	$ 9,152.00	$ 1,136.00	$ 9,996.80	$ 1,500.00	$ 13,200.00	$ 800.00	$ 7,040.00	$ 1,100.00	$ 9,680.00	$ 1,250.00	$ 11,000.00	$ 2,100.00	$ 18,480.00
14	MAN HOLE CASTING, E.J. #1045 OR EQ.	EACH	4.0	$ 550.00	$2,200.00	$ 635.00	$ 2,540.00	$ 550.00	$ 2,200.00	$ 400.00	$ 1,600.00	$ 400.00	$ 1,600.00	$ 505.00	$ 2,020.00	$ 500.00	$ 2,000.00	$ 530.00	$ 2,120.00
15	MANHOLE STD. 4' I.D. 0 - 10' DEEP	EACH	1.0	$ 2,500.00	$2,500.00	$ 1,745.00	$ 1,745.00	$ 1,725.00	$ 1,725.00	$ 2,000.00	$ 2,000.00	$ 1,700.00	$ 1,700.00	$ 2,150.00	$ 2,150.00	$ 2,000.00	$ 2,000.00	$ 2,200.00	$ 2,200.00
16	REMOVING CONC. CURB	L.FT.	8.0	$ 10.00	$80.00	$ 20.00	$ 160.00	$ 15.00	$ 120.00	$ 10.00	$ 80.00	$ -	$ -	$ 14.00	$ 112.00	$ 3.75	$ 30.00	$ 50.00	$ 400.00
17	REMOVING CONCRETE CURB AND GUTTER	L FT	38	$ 20.00	$760.00	$ 6.00	$ 228.00	$ 10.00	$ 380.00	$ 10.00	$ 380.00	$ 7.00	$ 266.00	$ 14.00	$ 532.00	$ 3.75	$ 142.50	$ 20.00	$ 760.00
18	REMOVING CONCRETE DRIVE APPROACH	S. YD.	24.0	$ 10.00	$240.00	$ 7.00	$ 168.00	$ 5.00	$ 120.00	$ 10.00	$ 240.00	$ 6.00	$ 144.00	$ 9.00	$ 216.00	$ 4.50	$ 108.00	$ 15.00	$ 360.00
19	REMOVING CONC. SIDEWALK	SQ.FT.	263.5	$ 2.00	$527.00	$ 1.00	$ 263.50	$ 1.00	$ 263.50	$ 1.00	$ 263.50	$ -	$ -	$ 1.30	$ 342.55	$ 1.00	$ 263.50	$ 1.00	$ 263.50
20	REMOVING PAVEMENT	S. YD.	123.0	$ 10.00	$1,230.00	$ 10.50	$ 1,291.50	$ 5.00	$ 615.00	$ 10.00	$ 1,230.00	$ 4.00	$ 492.00	$ 4.70	$ 578.10	$ 10.00	$ 1,230.00	$ 8.00	$ 984.00
21	REMOVING TREES 13" - 24"	EACH	1.0	$ 300.00	$300.00	$ 600.00	$ 600.00	$ 500.00	$ 500.00	$ 200.00	$ 200.00	$ 1,500.00	$ 1,500.00	$ 950.00	$ 950.00	$ 250.00	$ 250.00	$ 500.00	$ 500.00
22	REMOVING TREES > 37" OR LARGER	EACH	1.0	$ 2,000.00	$2,000.00	$ 1,150.00	$ 1,150.00	$ 800.00	$ 800.00	$ 500.00	$ 500.00	$ 2,000.00	$ 2,000.00	$ 1,500.00	$ 1,500.00	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 1,000.00
23	SANITARY SEWER 8" S.D.R. 35	L FT	20.0	$ 50.00	$1,000.00	$ 105.00	$ 2,100.00	$ 97.00	$ 1,940.00	$ 150.00	$ 3,000.00	$ 85.00	$ 1,700.00	$ 102.00	$ 2,040.00	$ 150.00	$ 3,000.00	$ 150.00	$ 3,000.00
24	SANITARY SEWER WYE 10" x 6" SDR 35	EACH	1.0	$ 230.00	$230.00	$ 90.00	$ 90.00	$ 720.00	$ 720.00	$ 150.00	$ 150.00	$ 700.00	$ 700.00	$ 495.00	$ 495.00	$ 1,200.00	$ 1,200.00	$ 800.00	$ 800.00
25	SANITARY SEWER 6" SDR 35 (SERVICE LEAD)	L FT	30.0	$ 25.00	$750.00	$ 28.00	$ 840.00	$ 39.00	$ 1,170.00	$ 40.00	$ 1,200.00	$ 41.00	$ 1,230.00	$ 28.00	$ 840.00	$ 42.00	$ 1,260.00	$ 25.00	$ 750.00
26	STORM SEWER PIPE 12" CL-76-CL-V	L FT	156.0	$ 28.00	$4,368.00	$ 29.00	$ 4,524.00	$ 20.00	$ 3,120.00	$ 35.00	$ 5,460.00	$ 31.00	$ 4,836.00	$ 31.00	$ 4,836.00	$ 36.00	$ 5,616.00	$ 32.00	$ 4,992.00
27	TERRACE GRADING	L FT	880.0	$ 13.00	$11,440.00	$ 7.35	$ 6,468.00	$ 11.00	$ 9,680.00	$ 2.00	$ 1,760.00	$ 9.00	$ 7,920.00	$ 12.00	$ 10,560.00	$ 4.00	$ 3,520.00	$ 8.00	$ 7,040.00
28	TRAFFIC CONTROL	LUMP	1.0	$ 5,000.00	$5,000.00	$ 1,875.00	$ 1,875.00	$ 861.00	$ 861.00	$ 6,500.00	$ 6,500.00	$ 1,000.00	$ 1,000.00	$ 1,800.00	$ 1,800.00	$ 9,500.00	$ 9,500.00	$ 3,500.00	$ 3,500.00
29	WATER VALVE BOX COMPLETE	EACH	3.0	$ 250.00	$750.00	$ 210.00	$ 630.00	$ 350.00	$ 1,050.00	$ 300.00	$ 900.00	$ 470.00	$ 1,410.00	$ 250.00	$ 750.00	$ 250.00	$ 750.00	$ 250.00	$ 750.00
			TOTAL		$122,980.30		$ 102,956.78		$ 105,868.70		$ 113,503.75		$114,931.00	*#15 CALCULATE ERROR	$116,074.20		$120,860.20		$121,031.95

CITY COMMISSION AGENDA ITEM ___________
CITY COMMISSION MEETING DATED May 9, 2006

MEMORANDUM

To:	Mayor and City Commissioners
From:	Lee J. Slaughter, Assistant City Manager
Date:	May 3, 2006
Re:	Agreement with Harbor Unitarian Universalist Congregation to Operate at the Farmers Market

SUMMARY OF REQUEST:

To authorize the Mayor to sign a one year agreement between the City of Muskegon and Harbor Unitarian Universalist Congregation to sell Fair Trade Coffee, baked goods, tea, soft drinks and bottle water at the Muskegon Farmers Market. The Church is a member of the Friends of the Market group that was recently organized to enhance the aesthetic appeal of the Market.

FINANCIAL IMPACT:

None. (Harbor Unitarian Universalist Congregation will pay the City 10% of sale)

BUDGET ACTION REQUIRED:

None.

STAFF/COMMITTEE RECOMMENDATION:

The Leisure Services Board is scheduled to meet in July. In between meetings, the Director of Leisure Services Department is authorized to take action on such request and advise the body later. It is therefore, staff's recommendation that the Commission approves this request.

Revised 5/8/06
By Lee Slaughter

2006-41(h)

LICENSE AGREEMENT

THIS AGREEMENT made May 9, 2006, between the **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City") and **Harbor Unitarian Universalist Congregation**, a Michigan non-profit corporation of 1296 Montgomery Avenue, Muskegon, MI 49442 ("Licensee"). In consideration of the mutual promises herein contained, the parties agree:

1. **Grant of License.** City grants to Licensee a non-exclusive license to occupy and use, subject to the terms of this license a designated area at The Farmers Market at 700 Yuba Street in the City of Muskegon, Muskegon County, Michigan ("Premises"):

2. **Term, Renewal.** The term of this license shall commence May 10, 2006 and shall terminate December 20, 2006 (or at the close of the Market).

3. **License Payments.** Licensee shall pay to City 10% of gross receipts associated with sales on the Premises. Licensee projects sale $250 to $300 per day (Saturdays). Licensee shall make payments to the City of Muskegon on the first of the month beginning June through December, 2006, with any additional amounts owed by Licensee on December 30. Licensee shall provide reports, in a form acceptable to City, evidencing gross receipts from the sale of referenced permitted products on the Premises, with such reports being provided on the first of each month along with payment to the City.

4. **Use of the Premises.** The Premises shall be used and restricted as follows:

   a. ***Operating of Concession for the Sale of Fair Trade Coffee, Bake Goods, Tea, Soft Drinks and Bottle Water.*** The Licensee is permitted to sell Fair Trade Coffee, Bake Goods, Tea, Soft Drinks and Bottle Water on the Premises.

   b. ***Inconsistent Uses.*** Any use for other purposes than specified above, without written permission, shall render this license immediately revocable at the option of City.

5. **Utilities.** Licensee shall supply and pay for all utilities to the Premises. City shall have no responsibility for furnishing any utilities and does not guarantee same; provided that City shall have the right to enter upon the Premises at any time for the purpose of repairing municipal utilities involved.

6. **Taxes and Assessments.** Licensee shall pay all lawful fees, taxes and assessments during the term of this License which may be levied by any authority. Said taxes and assessments may include taxes on fixtures, equipment and property owned by Licensee or situated on the Premises.

7. **Signs.** Licensee shall seek permission of the City prior to placing any signs on the Premises.

8. **Condition of the Premises.** Licensee shall exercise its best efforts to insure that none of its containers become litter on the Premises.

9. **Alterations and Additions.** No alterations or additions to the Premises shall be made unless City consents in writing.

10. **Liens.** Licensee shall pay promptly for all labor or materials and shall keep the Premises free of all liens or encumbrances of any kind.

11. **Indemnification.** To the fullest extent permitted by law, Licensee agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working in behalf of the City, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this agreement.

12. **Hazardous Substances.** No goods shall be brought onto the Premises that are in any way explosive or hazardous. No activity shall be conducted on the Premises nor machinery used if such activity or machinery will increase the cost of or suspend insurance on the Premises or will in any way injure the Premises. Licensee shall indemnify, pursuant to the provisions of this license, the City concerning the presence or release of any hazardous substance onto the Premises. Provided, nothing herein shall prevent the safe use of propane for the heating of water for coffee and tea.

13. **Default.** If Licensee fails to pay when due any payment required by this license, or defaults in any other terms hereof, City may declare this license forfeited only if Licensee fails to cure such Default within 10 days after Licensee receives written notice from City of the Default. If Licensee fails to cure a Default within such 10-day period, City may exercise a right of reentry on the Premises after declaring forfeiture.

14. **Surrender of Premises on Termination of License.** At termination, Licensee shall surrender the Premises. Upon termination, City may prohibit Licensee from further sales on the Premises.

15. **Holding Over.** If Licensee holds over the Premises after termination said holding shall be deemed holding over from month to month. The terms of this License shall apply during said monthly terms.

16. **Insurance.** The Licensee shall not commence occupancy until it has obtained the insurance required under this paragraph. All coverage shall be with insurance carriers acceptable to City.

a. ***Workers' Compensation Insurance.*** The Licensee shall procure and maintain during the life of this contract, Worker's Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.

b. ***Commercial General Liability Insurance.*** The Licensee shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (i) Contractual Liability; (ii) Products and Completed Operations; (iii) Independent Licensees Coverage; (iv) Broad Form General Liability Extensions or equivalent; (v) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

c. ***Motor Vehicle Liability.*** The Licensee shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than $500,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

d. ***Additional Insured.*** Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insureds": The City, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

e. ***Cancellation Notice.*** Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Ten (10) ~~thirty (30)~~ days' Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to:

CITY OF MUSKEGON
Attn: Assistant City Manager
933 Terrace Street
Muskegon, Michigan 49440

f. ***Proof of Insurance Coverage.*** The Licensee shall provide the City at the time the contracts are returned by her/him for execution, certificates and policies as listed below:

i. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;

ii. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

iii. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

iv. Original Policy, or original Binder pending issuance of policy, for Owner's and Licensee's Protective Liability Insurance.

v. If so requested, Certified Copies of all policies mentioned above will be furnished.

g. ***Notice of Termination.*** If any of the above coverages expire during the term of this contract, the Licensee shall deliver renewal certificates and/or policies to City at least ten (10) days prior to the expiration date.

17. **Non-Waiver.** The failure of City to enforce any of its rights hereunder shall not be deemed a waiver of subsequent enforcement.

18. **Time of the Essence.** Time is expressly declared to be of the essence of this license.

19. **Cumulative Rights and Remedies.** Every right and remedy given to the City by this License is cumulative and no right or remedy shall be exclusive of any other provided by law. The exercise of one right or remedy by City shall not impair the right of City to exercise any other.

20. **Non-Assignment.** This License may not be assigned at any time by Licensee.

21. **Insolvency and Bankruptcy.** If a petition in bankruptcy is filed by or against Licensee or if it becomes insolvent within the meaning of any state or federal insolvency law, or if it makes an assignment for the benefit of its creditors, or a receiver of any part of Licensee's business is appointed by any state or federal court, and the said appointment is not vacated within 15 days of the appointment, or if any property or assets of the Licensee is attached and not vacated within 15 days of the attachment, this Licensee shall be deemed to have been breached by Licensee and City shall be entitled to exclude Licensee from the Premises without any prior notice. This license shall in no event constitute an asset of Licensee assignable to a receiver or trustee in bankruptcy by operation of law or otherwise.

22. **Inspection of Premises.** City reserves the right to enter the Premises at any reasonable time for the purpose of inspection and exercise of any and all rights hereunder.

23. **Benefit.** This License Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and personal representatives.

24. **No Interest in Land Created.** Licensee agrees that this agreement is a license and not a lease, and that no interest or estate in real property or the improvements thereon is created by this agreement.

25. **No Third Party Beneficiary Clause.** This Agreement shall benefit only the parties to this Agreement, and not a third party.

26. **Notices.** Notices under this agreement shall be mailed first class mail as follows:

CITY OF MUSKEGON
Attn: Assistant City Manger
933 Terrace Street
Muskegon, Michigan 49440

Harbor Unitarian Universalist Congregation
1296 Montgomery Avenue
Muskegon, MI 49442

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CITY – CITY OF MUSKEGON

By: ____________________
Name: Stephen J. Warmington
Title: Mayor
Date: ________________, 2006

and: Gail A. Kundinger
Name: Gail A. Kundinger, MMC
Title: Clerk
Date: 5-12, 2006

LICENSEE – Unitarian Universalist Congregation

By: ____________________
Name: Andrew Fink
Title: President/Chairman
Date: 6/9/06, 2006

Revised 5/8/06 per further info from church
By Lee Slaughter, Assistant City Manager

O:\MANAGER\SLAUGHTER\WORD\LSFMarketFriendsOfMarketAgreeWithUniversalChurch5306.doc

City of Muskegon

Certificate of Registration

Harbor Unitarian Universalist Congregation *700 Yuba Street* *Muskegon MI 49442*

The above named business has registered with the City of Muskegon Clerk's Office as required in Chapter 5 (Business Registration and Regulation) of the City of Muskegon Code of Ordinances, adopted August 11, 1998, and effective August 31, 1998. This Certificate of Registration will expire on December 20, 2006, or at the close of the Market.

Gail A. Kundinger, MMC
City Clerk

Date June 09, 2006

Must be displayed in a prominent place.

ACORD. CERTIFICATE OF LIABILITY INSURANCE

CSR TT HARBO-2

DATE (MM/DD/YYYY) 06/07/06

PRODUCER

Bylsma-Nederveld Agency, Inc.
3001 Fuller N.E.
Grand Rapids MI 49505
Phone: 616-363-3843 Fax: 616-363-6692

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

INSURED

Unitarian Universalist
1296 Montgomery St.
Muskegon MI 49441

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: GuideOne Insurance	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	1177575	10/01/05	10/01/06	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $5,000 $1,000,000 $2,000,000 $2,000,000
		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
		EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $ $ $ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
		OTHER					

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

The City of Muskegon, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof are included as additional insured ATIMA on the General Liability

CERTIFICATE HOLDER

CITYOFG

CITY OF MUSKEGON
PO BOX 536
933 TERRACE STREET
MUSKEGON MI 49440

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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

MEMORANDUM

To:	Mayor and City Commissioners
From:	Lee J. Slaughter, Assistant City Manager
Date:	May 3, 2006
Re:	Agreement with Harbor Unitarian Universalist Congregation to Operate at the Farmers Market.

Attached is a slightly revised version of the document in your agenda packet. No major changes have been made. The church asked to add a few other items to the goods they are permitted to sell and also for the contract to reflect that they will be using Propane to heat water to make coffee and tea. Staff supports their requests.

Thank you.

MUSKEGON
West Michigan's Shoreline City

CITY OF MUSKEGON
BUSINESS REGISTRATION APPLICATION
$30.00 REGISTRATION FEE

Enclose the Fire Safety Audit Worksheet with the application. If you are non-profit, please enclose a copy of your Non-Profit Status.

PLEASE TYPE OR PRINT (FOR QUESTIONS CALL; (231) 724-6705)

BUSINESS NAME (or DBA if used): Harbor Unitarian Universalist Congregation	**Check one box only:** ☐ Individual ☐ Corp ☐ Partnership ☒ Non-Profit ☐ LLC ☐ Government ☐ Other (Explain) ☐ Single Member LLC *

COMPLETE COMPANY NAME: Harbor Unitarian Universalist Congregation

BUSINESS CHARACTER/CATEGORY: concession sales

FEIN# or SSN# *(both if Single Member LLC): 38 3072250	**HOURS OF OPERATION:** 8am - 2pm Tues, Thurs, Sat.	**NUMBER OF EMPLOYEES:** 0 All volunteer (total approx 30)

BUSINESS PHONE: 755-2932	**START-UP-DATE:**

MAILING ADDRESS (for renewal and correspondence):

Number and Street: 1262 Montgomery

City, State, Zip: Muskegon Mi 49441

PHYSICAL ADDRESS OF BUSINESS IN MUSKEGON:

Number and Street:

City, State, Zip:

OWNER/MANAGER: Andrew F. Fink	**TITLE:** Congregation President
RESIDENCE ADDRESS: Number and Street: 415 Division St. City, State, Zip: Whitehall Mi 49461	**HOME TELEPHONE:** 893-5327 **BUSINESS TELEPHONE:** 755-2932

DRIVER LICENSE NUMBER:

EMERGENCY CONTACT: (1) ANDREW FINK, (ABOVE INFO)

(2) **Name:** NANA KRATCHOVIL, RELIGIOUS LEADER

Address: 1571 LEXINGTON AVE 49441 **Phone:** 759-0522

I certify that the above information is correct to the best of my knowledge.

Signature of Applicant **Date** 6-9-06

Alice

Commission Meeting Date: May 9, 2006

Date: **May 9, 2006**

To: **Honorable Mayor & City Commission**

From: **Affirmative Action/ Community and Economic Development**

RE: **Changes to Industrial Facility Tax Abatement Contract**

SUMMARY OF REQUEST: To approve changes to the attached Industrial Facility Tax abatement contract. The only change is in Section 1.3 with the addition of the number of 14% for minority employment.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the changes to the contract.

COMMITTEE RECOMMENDATION: The Equal Opportunity Committee has recommended the changes.

CITY OF MUSKEGON

CONTRACT FOR TAX ABATEMENT
Act 198 Public Acts of 1974

AGREEMENT between CITY OF MUSKEGON, a municipal corporation of 933 Terrace Street, Muskegon, Michigan 49441, ("City") and ("Company").

Recitals:

A. The Company has applied to City for the establishment of an industrial development district or industrial rehabilitation district pursuant to the provisions of Act 198 of the Public Acts of 1974, as amended, which act requires a contract between the City and the Company to be agreed and submitted with the Company's subsequent anticipated application for an industrial facilities exemption certificate.

B. That in addition to the statutory requirement, the City has determined that it is in the best interests of the taxpayers, property owners and residents of the City that this Agreement be approved and executed prior to the establishment of the requested district, and the City deems this Contract, together with the conditions set forth in the said Act to constitute a necessary element in the City's determination whether or not to create the district.

C. The Company intends to install the project set forth in its application ("project") which it believes qualifies for the process of establishing the district and the application for industrial facilities exemption certificate.

D. The City, provided this Agreement is executed, will determine whether to create the district based upon the potential for the production of permanent jobs, the continuation, **stabilization** or increase of economic activity, planning and zoning considerations and the City's general plan and intentions regarding economic development. In addition to the City policy considerations and predictions that the Company's proposed district and certificate benefit the community in those ways, the City has further determined that the contractual commitments made by the Company to thereby assist the community shall be binding on the Company and necessary to continue the tax exemption made possible by the certificate.

E. This contract shall become effective upon the issuance of an Industrial Facilities Tax Exemption Certificate.

NOW THEREFORE THE PARTIES AGREE:

1. **COMPANY AGREEMENT**. The Company irrevocably commits to the investment, job retention and job creation promises made in its application, a copy of which is attached hereto and incorporated herein. In particular the Company agrees:

1.1 That ____________ percent of the promised new jobs shall be in place with full-time employees on or before ___________, 20_____, and ___________ percent of the said jobs shall be in place with full time employees on or before _______, 20____ Finally, 100% of the jobs shall be filled and in existence with full-time employees by a date no later than two (2) years from the date of the granting of the certificate by the State Tax Commission, **subject to the provisions of section 3.4 of this agreement.**

1.2 That the amount of jobs listed on the application, whether new or retained, will be maintained through the life of the abatement, **subject to the provisions of section 3.4 of this agreement.**

1.3 The Company shall meet the affirmative action goal included in the application or in any documents supplied by the City and utilized by the Company, including any additional representations made to the City Commission on or before the date two (2) years after the granting of the certificate by the State Tax Commission. It shall maintain the said levels of *14%* employment diversity during the period of the certificate, **subject to the provisions of section 3.4 of this agreement.**

1.4 The Company, by the end of two (2) years from the date of the grant of the certificate by the State Tax Commission shall have completed the investment of $_______ in the equipment and improvements as shown in the application, **subject to the provisions of section 3.4 of this agreement.**

1.5 That the improvements and equipment to receive the tax abatement treatment shall be completed on or before the date two (2) years from the date of granting of the certificate by the State Tax Commission.

1.6 The Company shall pay its specific taxes required by the act in a timely manner, and shall not delay payments so as to incur any penalties or interest.

1.7 The Company shall fully cooperate with the City representatives in supplying all requested and required documentation regarding jobs, investment, the meeting of all goals and the timely installation and utilization of equipment and improvements. The City shall be entitled to inspect at reasonable hours the Company's premises where the said improvements and equipment have been installed and where the said jobs are performed.

1.8 The Company shall maintain, during the entire period for which the tax abatement is granted, the level of jobs, affirmative action goals, production and utilization of the improvements and equipment at the site where the district has been created and for which the tax exemption has been granted.

1.9 The Company shall not cause or fail to cure the release of any hazardous substance, or the violation of any environmental law on its premises in the City. It shall report any releases to the appropriate governmental authority in a timely and complete manner, and provide copies of said report documentation to the City. It shall comply with all orders and actions of any governmental agency having authority.

1.10 The Company shall maintain the equipment and improvements so as to minimize physical or functional obsolescence.

1.11 The Company shall continue to operate its business location in the City, containing the same number of and type of jobs, for the term of the certificate.

2. **AGREEMENT BY THE CITY**. Provided this contract has been executed and further provided all applications to create the district and achieve the industrial facility exemption certificate have been properly filed, the City shall, in a timely manner, determine in a public meeting to **whether to** create the district and **whether to** receive, process, and approve thereafter the Company's application for an industrial facilities exemption certificate. The City may consider this contract in a meeting separate from and prior to the meeting in which the City considers the creation of the district and/**or** approval of the application for certificate. Further, the City shall require the submission of this contract signed by the Company together with its applications, before creating the district.

3. **EVENTS OF DEFAULT**. The following actions or failures to comply shall be considered events of default by the Company:

3.1 Failure to meet any of the commitments set forth above.

3.2 The closing of the Company's facilities in the City. Closing shall mean for purpose of this Agreement, the removal, without transfer to another site within the City of substantially all of the production facilities, and the elimination of substantially all the jobs created or retained thereby, which are set forth in the Company's application.

3.3 Failure to afford to the City the documentation and reporting required.

3.4 The failure to create or retain jobs, meet affirmative action goals or expend the funds on equipment and improvements as represented in the application within the times required hereby, **unless the company can show that there has been a loss of revenue and employment due to circumstances beyond the control of the company. In order to make that showing the company shall have the burden of supplying, to the City's satisfaction, complete and**

convincing documentation supporting and justifying reductions in investment, failures to attain affirmative action goals or job losses, such as, without limitation, written evidence of lost contracts, accounting information showing reduced revenues due to the loss of business, (not due to diversion of production to affiliate companies or divisions of the company), production records showing reduced quantities over significant periods of time, and such other information required by the City to support the Company's claim that the failure to invest, failure to achieve affirmative action goals, or loss of jobs should not form the basis for a finding of default.

3.5 The bankruptcy or insolvency of the Company.

3.6 The failure to pay any and all taxes and assessments levied on the Company's property or any other taxes, local, state or federal, including but not limited to City income taxes and the withholding of said City income taxes from employees as required by the City Income Tax Ordinance.

3.7 The performance or omission of any act which would lead to revocation under MCLA 207.565, being §15 of the Act.

3.8 The violation of any provisions, promises, commitments, considerations or covenants of this Agreement.

4. **REMEDIES ON DEFAULT.** In the event of any of the above defaults the City shall have the following remedies which it may invoke without notice, except as may be reasonably required by the Company's rights to due process:

4.1 In the event of closing as determined after investigation of the facts and a public hearing, the Company shall be immediately liable for penalties to be paid forthwith to the city as determined as follows:

4.1.1 The Company shall pay to the City for prorata distribution to the taxing units experiencing the abatement, an amount equal to the difference between the industrial facilities tax which it has paid, and the total property taxes to the relevant taxing units which it would have paid, given its installations of improvements and equipment, during the years for which the certificate was in effect.

4.1.2 Immediate Revocation. The Company hereby consents to revocation to the IFT certificate before the State Tax Commission, without hearing, and the City shall submit a copy of this Agreement to the State Tax Commission in connection with its revocation procedure, giving notice that the default has occurred and immediate revocation should occur.

4.2 In the event the improvements and equipment have not been installed before the two (2) year period, in addition to the revocation procedures before the State Tax Commission, the abatement should immediately be reduced by the City proportionately, and any installations which have not been finished at the end of said two (2) year period shall not be eligible for the abatement thereafter and shall be placed on the regular tax roll.

4.3 Failure to Expend the Funds Represented. In the event, (whether or not the installations have been completed), the Company has not expended the funds it has represented on its application that it would invest for the installation of equipment, the abatement shall be reduced prorata, and any remaining value of equipment shall be placed on the regular tax roll, **unless the company can show, through receipts, etc. that the cost of the equipment was actually less than the amount estimated by the company (i.e., the same equipment was purchased as listed in the IFT application, but the bids came in less then expected).**

4.4 Job Creation and Retention. In the event the promised number of jobs have not been created or retained at the end of the two (2) years after the grant of the certificate by the State Tax Commission, the abatement shall be proportionately reduced, **unless the company can show that the loss of jobs, or inability to hire as many people as expected, is due to circumstances beyond the control of the company (such as an economic downturn).**

4.5 Affirmative Action Goals. In the event, after one (1) year from the grant of the certificate by the State Tax Commission, the affirmative action goals of the City for additional jobs have not been met on a prorata basis, the abatement shall be revoked.

4.6 For other violations of this Agreement or for actions or omissions by the Company amounting to grounds for revocation by statue, the City shall recommend to the State Tax Commission immediate revocation of the certificate.

4.7 Special Assessment. For any amount due to be paid to the City, under this Section 4, the Company consents that the City shall have a personal action against the Company for the said amount, and in addition, cumulatively, and not by election, the City shall have a special assessment lien on all the property of the Company personal and real, located in the City, for the collection of the amounts due as and in the manner of property taxes and in such case the collection of the said special assessment shall be accomplished by addition by the City to the Company's property tax statement regularly rendered.

5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan.

6. Counterparts. This Agreement may be executed in one or more counterparts. Notwithstanding such execution all such counterparts shall constitute one and the same Agreement.

7. Benefit. This Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and personal representatives.

8. Effective Date. This Agreement shall be effective on the date the State of Michigan Tax Commission grants the company at Industrial Facilities Exemption Certificate.

CITY OF MUSKEGON

By____________________________
Stephen J. Warmington, Mayor

and____________________________
Gail A. Kundinger, Clerk

By____________________________

Its_______________________

and____________________________

Its_______________________

Date: May 9, 2006

To: Honorable Mayor and City Commissioners

From: Engineering

RE: City – Michigan Department of Transportation Agreement for: Western Ave., Third St. to Terrace St. Streetscape

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SUMMARY OF REQUEST:

To approve the attached contract With Michigan Department of Transportation for streetscape (decorative concrete & street lights) work along Western Avenue from Third Street to Terrace Street (including all necessary related work) and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

Michigan Department of Transportation's participation of federal money is capped at $960,000 but not to exceed 80% of eligible cost. The estimated total construction cost (with engineering) of the project, is $1,195,000.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

That the attached agreement and resolution be approved.

COMMITTEE RECOMMENDATION:

RESOLUTION #2006-41(j)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE STREETSCAPING (decorative concrete & street lights) WORK ALONG WESTERN AVENUE FROM THIRD STREET TO TERRACE STREET (INCLUDING ALL 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 Commissioner Carter that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-5195** between the Michigan Department of Transportation and the City of Muskegon for the **streetscaping work along Western Ave. from Third Street to Terrace Street** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **06-5195** 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 9th day of May, 2006.

BY ______________________
Stephen J. Warmington, Mayor

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

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on **May 9, 2006.** The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

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

JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

June 7, 2006

RECEIVED
JUN 1 6 2006
City Clerks Office

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

Dear Ms. Kundinger:

RE:	MDOT Contract Number:	06-5195
	Control Section:	HPSL 61407
	Job Number:	87289

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

Sincerely,

Jackie Burch

Jackie Burch
Contract Processing Specialist
Design Support Area

Enclosure

Cc: C. Youngs, Design Support Area
Project Accounting, Financial Operations Division
Grand Region Engineer

Engineering

(ADVANCE CONSTRUCTION CONTRACT)
HPSL
CONSTRUCTION BY
LOCAL AGENCY

CAB	
Control Section	HPSL 61407
Job Number	87289
Project	HPSL 0661(016)
Federal Item No.	RR 5086
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	06-5195

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of JUN 0 6 2006, 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":

Streetscaping work along Western Avenue from Third Street to Terrace 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 PROJECT will be performed partially as an advance construction project; and

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

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

HIGH PRIORITY PROJECTS PROGRAM - SAFETEA LU

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

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

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

The part of the PROJECT work that shall be performed as an advance construction PROJECT shall meet applicable Federal requirements set forth on 23 CFR Section 630.701 through 630.711; 23 U.S.C. 115.

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

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

Request for PROJECT conversion to a regular Federal-Aid project shall be submitted to the DEPARTMENT by the REQUESTING PARTY as early as possible in the fiscal year that the advance construction PROJECT is anticipated to be reimbursed.

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, construction materials testing, and inspection as may be incurred by the DEPARTMENT and the REQUESTING PARTY, including any other costs incurred by the DEPARTMENT as a result of this contract, will be at PROJECT COST. Costs for construction engineering, construction materials testing, and inspection incurred by the REQUESTING PARTY for the PROJECT shall be limited to the lesser of: (1) 100 percent of the actual costs for construction engineering, construction materials testing, and inspection, or (2) 15 percent of the actual contracted physical construction costs.

The costs incurred by the REQUESTING PARTY for preliminary engineering 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 perform such administration of the PROJECT as is necessary to assist the REQUESTING PARTY to qualify the PROJECT for Federal Aid. Such administration shall include programming the

available Federal funds for the PROJECT with the FHWA and performing such review and oversight activities as are necessary to assist the REQUESTING PARTY in meeting applicable Federal and State requirements.

The DEPARTMENT shall authorize the REQUESTING PARTY to proceed with the PROJECT work being placed under contract in the following phases:

PHASE I:	ADVERTISING OF CONSTRUCTION CONTRACT
PHASE II:	AWARD OF CONSTRUCTION CONTRACT

The DEPARTMENT shall authorize the REQUESTING PARTY to proceed with the PROJECT work being done on a force account basis.

The REQUESTING PARTY shall not advertise the construction contract, award the construction contract, or perform the force account work for the PROJECT prior to receipt of written authorization from the DEPARTMENT to proceed.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to meet Federal Aid requirements.

4. The REQUESTING PARTY shall perform or cause to be performed all the PROJECT work. It is understood that portions or all of the PROJECT work will be placed under contract by the REQUESTING PARTY. The performance of the PROJECT work will be subject to the "General Agreement Provisions for Federal Aid Projects", attached hereto as "EXHIBIT I", pages 1 through 5, and made a part hereof, and the following conditions:

A. The REQUESTING PARTY, at PROJECT COST and on a force account basis, shall purchase the decorative street lighting necessary for the completion of the PROJECT.

B. The REQUESTING PARTY will, at no cost to the DEPARTMENT or the PROJECT, design or cause to be designed the PROJECT and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT are for its own purposes and are not to nor do they relieve the REQUESTING PARTY of liability for any claims, causes of action, or judgments arising out of the design of the PROJECT.

C. The REQUESTING PARTY, prior to receiving authorization from the DEPARTMENT to advertise the construction contract, shall certify to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State and Federal standards and regulations.

D. The REQUESTING PARTY shall secure the DEPARTMENT'S approval of the contracting procedures to be followed by the REQUESTING PARTY in connection with the administration of the construction contract for the PROJECT. It is understood that the construction contract(s) for the PROJECT shall be publicly advertised and awarded on the basis of the lowest responsive bid in accordance with current FHWA and DEPARTMENT procedures.

E. The REQUESTING PARTY, prior to receipt of authorization from the DEPARTMENT to award the construction contract, shall certify to the DEPARTMENT that the selection of the contractor was made in accordance with the terms of this contract and applicable Federal, State and local statutes, regulations, and ordinances.

F. The REQUESTING PARTY will comply with all applicable State, Federal and local statutes, ordinances and regulations, including, but not limited to those specifically relating to construction contract administration, and obtain all permits, approvals, and give appropriate notifications that are required for the performance of the PROJECT work.

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

G. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. The REQUESTING PARTY shall neither seek nor receive reimbursement for any extra work.

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

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

I. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements or secure any and all necessary permits with railway companies, utilities, concerned state, federal, and local agencies etc., as may be necessary for the performance of work required for the PROJECT, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

J. The REQUESTING PARTY shall require the contractor who is awarded the contract for the construction of the PROJECT to provide, as a minimum, insurance in the amounts specified in and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:

(1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.

(2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.

(3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.

K. Upon completion of all PROJECT work, the REQUESTING PARTY shall so notify the DEPARTMENT and shall request a final acceptance inspection thereof. In the event that there is disagreement between the parties with respect to final acceptance, the DEPARTMENT'S decision shall be final and binding.

5. The PROJECT COST shall be met in part by contributions from the Federal High Priority Project Program – SAFETEA LU.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Subtitle G - High Priority Projects, authorizes High Priority Project funding and establishes the maximum amount of funding for the PROJECT and associated phases under SAFETEA-LU Number 320 to be $2,320,000. It is understood that this amount may be subject to obligational authority limitation and after applying that limitation only an estimated $1,983,600 may be available for the PROJECT and associated phases. It is further understood that according to SAFETEA-LU, funds for the PROJECT and associated phases are to be allocated over a period of 5 years.

In the course of the first four years of this program, the DEPARTMENT may make 100 percent of the annual allocation available to the PROJECT with the understanding that in the final year adjustments will have to be made for obligational authority limitations which may reduce the amount of funding available for the PROJECT and associated phases.

Federal High Priority Project – SAFETEA LU Funds shall be applied to the eligible items of the PROJECT COST at the established Federal participation ratio equal to 80 percent up to an amount not to exceed $960,000. In accordance with the above, the current available Federal High Priority Project – SAFETEA LU Funds for this PROJECT are established to be $796,803, consisting of allocations for fiscal years 2005 and 2006. The balance 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. The PROJECT COST and the cost participation are estimated to be as follows:

	ESTIMATED COST	Federal High Priority Project – SAFETEA LU Funds (Current Fiscal Year)	Federal High Priority Project – SAFETEA LU Funds (Advance Construction) Future Fiscal Year	REQUESTING PARTY'S SHARE (Future Fiscal Year)
Contracted Work	$ 930,000	$744,000	$ -0-	$186,000
Force Account Work	$ 170,000	$ 52,803	$ 83,197	$ 34,000
Construction Eng & Inspection	$ 95,000	$ -0-	$ 76,000	$ 19,000
Total	$1,195,000	$796,803	$159,197	$239,000

Contingent upon availability of Federal Funds and Federal approval, Federal High Priority Project – SAFETEA LU Funds, for future fiscal years, may be applied to the cost incurred as advance construction, in an amount such that the Federal Funds equal a participation ratio of 80 percent, subject to the obligational authority limit for the Federal High Priority Project – SAFETEA LU Funds for this PROJECT.

Upon completion and final accounting of this PROJECT and associated phases under SAFETEA – LU Number 320, Federal High Priority Project – SAFETEA LU Funds may be adjusted among all phases such that the total Federal High Priority – SAFETEA LU Funds does not exceed $2,230,000 subject to the obligational authority limit.

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

6. A working capital deposit by the REQUESTING PARTY will not be required for this project.

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 REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work. Billings for costs incurred by the REQUESTING PARTY under the terms of this contract shall be prepared and submitted to the DEPARTMENT by the REQUESTING PARTY for reimbursement with Federal Funds in accordance with the procedures of the DEPARTMENT. Progress billings may be submitted bi-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". 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. The REQUESTING PARTY shall make prompt payments for construction engineering and inspection costs, if any, incurred by the DEPARTMENT for the PROJECT upon receipt of progress billings from the DEPARTMENT.

The REQUESTING PARTY shall not request final reimbursement for eligible costs until final acceptance of the PROJECT. The REQUESTING PARTY shall request a final acceptance inspection of the PROJECT in accordance with the provisions of Section 4 of this contract. Should the REQUESTING PARTY fail to secure final acceptance of the PROJECT within six (6) months after completion of the work, the REQUESTING PARTY shall repay all Federal funds reimbursed for the PROJECT. Upon final acceptance of the PROJECT by the DEPARTMENT in accordance with the provisions of Section 4 of this contract and DEPARTMENT procedures, the REQUESTING PARTY may request final reimbursement.

9. The REQUESTING PARTY shall maintain accurate records and accounts relative to the cost of the PROJECT. Said accounts shall be retained for a period of three (3) years after final payment by the DEPARTMENT and shall be available for audit by the DEPARTMENT and the FHWA.

The REQUESTING PARTY, upon completion of the PROJECT and payment of all items of PROJECT COST related thereto, shall make a final accounting to the DEPARTMENT.

Reimbursement of any cost pursuant to this contract shall not constitute a final determination by the DEPARTMENT of the allowability of such cost and shall not constitute a waiver by DEPARTMENT of any violation of the terms of this contract committed by the REQUESTING PARTY. Final settlement of costs shall be made upon completion of all PROJECT work and the DEPARTMENT'S acceptance of an audit performed by a certified public accountant in accordance with 49 CFR Part 18.26, and OMB Circular A-128, and/or final audit by the DEPARTMENT. The REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of cost 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 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 Fund in settlement of said claim.

10. 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.

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

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

A. From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and

B. From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation, response and cleanup costs, and attorney fees or other related costs, arising out of, under, or by reason of this Agreement, including the design of the PROJECT, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents or employees.

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

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

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

12. 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.

13. 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.

14. 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.

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

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

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

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

16. 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.

17. 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.

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

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

CITY OF MUSKEGON

By

Title: Stephen J. Warmington
Mayor

By Gail A. Kundinger

Title: Gail A. Kundinger, MMC
City Clerk

MICHIGAN DEPARTMENT OF TRANSPORTATION

By John C. Friend for

Department Director MDOT

4/28/06

REVIEWED 4-21-06 CONTRACT/ADMIN

EXHIBIT I

GENERAL AGREEMENT PROVISIONS FOR FEDERAL AID PROJECTS

1. General Provisions:

   A. The REQUESTING PARTY will comply with all FHWA requirements concerning special requirements of law, program requirements and other administrative requirements.

   B. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

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

2. Federal Clean Air Act of 1970: The political subdivisions which are a 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:

   A. 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.

   B. 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.

   C. 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.

3. Other Regulatory Requirements:

   A. The REQUESTING PARTY hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements of 49 CFR Part 18 (U.S. DOT Implementation of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or "Common Rule") as they relate to the application, acceptance and use of Federal Funds for this federally-assisted project.

B. The REQUESTING PARTY shall be responsible for the accurate and detailed accounting of the costs and expenses incurred in the performance of any part of the PROJECT work it agrees to undertake as provided within this contract. Said accounts shall be maintained in accordance with generally accepted government accounting principles and 49 CFR Part 18. Said accounts shall be made available for review and audit by the DEPARTMENT and, as required, by the FHWA and appropriate U.S. governmental agencies and shall be retained on file for a period of not less than three years from the date of the final payment for work conducted under this contract.

C. The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 98-502, and OMB Circular A-133. All such audits are subject to the review and approval of the DEPARTMENT, the FHWA, and the Office of the Inspector General.

(1) 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.

(2) 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 numbers(s). This information must also be submitted to the address below.

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

(4) Agencies must also comply with applicable State laws and regulations relative to audit requirements.

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

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

4. Retention and Custodial Requirements for Records:

A. Financial records, supporting documents, statistical records and all other records pertinent to this instrument shall be retained for a period of 3 years, with the following exception:

(1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property, if any, required with Federal Funds shall be retained for 3 years after its final disposition.

(3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.

B. The retention period starts from the date of the submission of the final expenditure report.

C. The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts and transcripts.

5. Equal Employment Opportunity:

A. The REQUESTING PARTY agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

B. The REQUESTING PARTY agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contractors and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

C. The REQUESTING PARTY further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap, or age; and that it has an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.

6. Copeland Act: All contracts in excess of $2,000 for construction or repair awarded by the REQUESTING PARTY and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The REQUESTING PARTY shall report all suspected or reported violations to the DEPARTMENT.

7. Davis-Bacon Act: When required by the Federal program legislation, all construction contracts awarded by the REQUESTING PARTY and its contractors or subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The REQUESTING PARTY shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The REQUESTING PARTY shall report all suspected or reported violations to the DEPARTMENT.

8. Contract Work Hours and Safety Standards Act: Where applicable, all contracts awarded by the REQUESTING PARTY in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act, if applicable to construction work, provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or

contracts for transportation or transmission of intelligence.

9. Access to Records: All negotiated contracts (except those of $25,000 or less) awarded by the REQUESTING PARTY shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

10. Civil Rights Act: The REQUESTING PARTY shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:

    A. The primary purpose of and instrument is to provide employment, or

    B. Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

11. Nondiscrimination: The REQUESTING PARTY hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the ground of race, color, national origin, sex, handicap, or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the REQUESTING PARTY receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

12. Rehabilitation Act: The REQUESTING PARTY shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education and Welfare (45 CFR, Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

PART II

STANDARD AGREEMENT PROVISIONS

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.

<u>March, 1998</u>

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. <u>Compliance with Regulations</u>: 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. <u>Nondiscrimination</u>: 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. <u>Solicitations for Subcontracts, Including Procurements of Materials and Equipment</u>: 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. <u>Information and Reports</u>: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and 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. <u>Sanctions for Noncompliance</u>: 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. <u>Incorporation of Provisions</u>: 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.**

Commission Meeting Date: May 9, 2006

Date: **May 2, 2006**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Approval of contractor for demolition of structure at 280 Iona**

SUMMARY OF REQUEST: To approve the contract with Press's LLC, 8081 Holton Duck Lake Road Horton, Michigan for the demolition of the city owned home at 280 Iona for **Three Thousand Seven Hundred thirty dollars ($3,730)** Press was the only contractor that submitted a bid for the project. After the demolition is completed the Community and Neighborhood Services office will solicit bids from qualified builders to construct a new home on the site. In an effort to continue the City's assertive neighborhood revival efforts. An illustration of the house that the Community and Neighborhood Services office anticipates being built on the site is attached.

FINANCIAL IMPACT: The funding for the demolition will be taken from the City's HOME funds from fiscal year 2005 and program income.

BUDGET ACTION REQUIRED: None required

STAFF RECOMMENDATION: To approve the Community and Neighborhood Services request.

COMMITTEE RECOMMENDATION: The Commission approved for the Community and Neighborhood Services office to obtain 280 Iona from the state of Michigan, for the original goal of rehabilitating the structure.

But after further study, it has been determined that it will be in the City's best interest to demolish the structure and rebuild.

Traditional house plan 20-1243

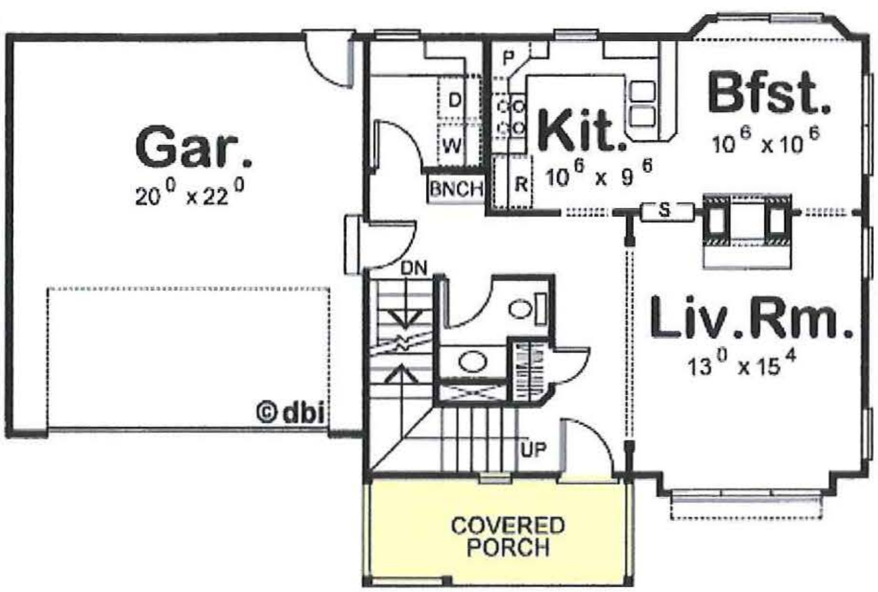
copyrighted by designer

Reverse Front Elevation

Square Footage:	1389	Width:	
Bedrooms:	3	Depth:	
Bathrooms:	2½		
Levels:	2	Available Foun	
Garage Stalls:	2	Basement	
		Crawlspace	
Main Floor Area:	725	Slab	
Upper Floor Area:	664	If your foundatio not available, ple	
Basement Area:	725		
Bonus Floor Area:	224		

More by this designer

Main Level



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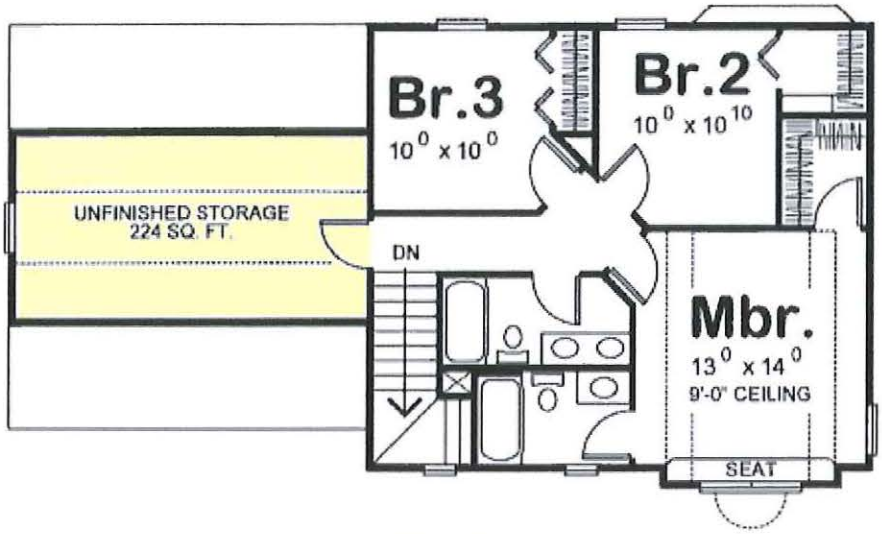
Upper Level



copyrighted by designer

More Info

Additional House Features

covered front porch
suited for narrow lot
walk-in closet
unfinished basement
open floor plan
storage area
upstairs master bdrm

Designer Comments

This is a new design and may take 5 to 10 business days to complete.

Traditional homes a
most common style
throughout the Unit
They are commonly
of many architectur
modified to meet th
of the typical Ameri

PURCHASE T

Questions about

If you have any hc
questions or can't
plans that meet yc
please contact us:

Toll-free 1-888-70

Related Plans

By this designer
Traditional style

Commission Meeting Date: May 9, 2006

Date: **May 1, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Public Hearing - Request to Establish an Obsolete Property District – 1133 W. Western**

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Kirksey Investment Corporation, 1204 W. Western, Muskegon, MI 49441, has requested the establishment of an Obsolete Property District. The district would be located at 1133 W. Western Avenue, Muskegon, MI. This project will consist of rehabbing this building into a warehousing facility. A description of the project is found on the following pages. Total capital investment for this project is $500,000.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

None

COMMITTEE RECOMMENDATION:

None.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2006-43(a)

A resolution establishing an Obsolete Property Rehabilitation District.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

A. The City of Muskegon has been designated as a qualified local government unit for the purpose of establishing Obsolete Property Rehabilitation Districts and approving Applications for Obsolete Property Rehabilitation Exemption Certificates.

B. The area located in the land described in this resolution is known to the City Commission and is clearly characterized by the presence of obsolete commercial property, and the land and improvements are obsolete commercial property.

C. Notice has been given by certified mail to the owners of all real property within the proposed Obsolete Property Rehabilitation District and a hearing has been held offering an opportunity to all owners and any other resident or taxpayer of the City to appear and be heard. Said notice was given at least ten (10) days before the hearing.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. That the property described in this resolution and proposed as an Obsolete Property Rehabilitation District is characterized by obsolete commercial property.

2. That the obsolete commercial property, the subject of this resolution, is described on the Attachment A to this resolution.

3. That the City Commission hereby establishes an Obsolete Property Rehabilitation District on the lands and parcels set forth in the attached description.

This resolution passed.

Ayes Gawron, Spataro, Warmington, Wierengo, and Carter

Nays Davis and Shepherd

CITY OF MUSKEGON

By Gail A. Kundinger

Gail A. Kundinger, MMC
Clerk

CERTIFICATE 2006-43(a)

This resolution was adopted at a meeting of the City Commission, held on May 9, 2006. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kundinger

Gail A. Kundinger, MMC
Clerk

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (A)
GENERAL FACILITY DESCRIPTION

The 1133 W. Western Avenue facility is a series of buildings and additions that were constructed over the years from 1929-1953.
The original owner was Anaconda Wire and Cable Company, and this facility was constructed for their wire drawing and coating operations. This facility was used by Anaconda until the early 1980's, then it was sold to Stanley Whittaker Enterprises (SWECO). SWECO used this facility for multiple manufacturing and warehousing tenants until it was sold to Kirksey Investment Corporation(KIC) in 1991. KIC operated the facility as an industrial incubator and warehouse facility until 1999 when it had a fire that destroyed most of the roof system and a good share of its exterior wall system.
Since 1999 this facility has sat vacant, with no occupant or productive use.
Prior to the fire in 1999 this facility consisted of approx. 200,000 sq. ft. of floor space in a two story plus basement building. After the fire in 1999 this facility consist of approx. 130,000 sq. ft. of floor space in a single story plus basement building.

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (B)
PROPOSED USE DESCRIPTION

It is proposed that this facility will be utilized and operated as an industrial incubator and warehouse facility. This facility will offer a full range of services to meet the needs of the surrounding community for affordable space to lease, warehousing, and storage services as the market demands.

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (C)
DESCRIPTION OF PROPOSED REHAB

The facility will undergo demolition of the remaining walls and structures above the existing second floor slab, that no longer serve a useful purpose on this site. The exterior wall and roofing systems will be installed to bring the remaining structure to a safe and usable condition. This exterior facade will also be a pleasant change from the Blighted appearance that it currently has. The revisions will also include additional entrances and exits as well as ramps to meet the ADA requirements. The interior changes will be limited to code compliance and "White Boxing" of the interior space to provide a very clean, safe and secure working environment for our Tenants.

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (D)
DESCRIPTION OF FIXED BUILDING EQUIPMENT TO BE ADDED

The equipment that will be added to this facility will be limited to mechanical, electrical lighting, and HVAC equipment to adequately service this facility, and interior partition systems as may be necessary to accommodate our tenants needs.

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (E)
DESCRIPTION OF TIME SCHEDULE

It is anticipated that the required spot demolition activities will begin immediately to prepare the way for a summer work schedule for the bulk of this project.
Our Architect is finalizing the construction documents currently for submittal to plan review for issuance of our building permit. If this process goes as planned we anticipate brick and mortar beginning in June, with the exterior being completed by November. We are projecting a one year build schedule, just to allow us enough time to finish the anticipated interior build outs. We will concentrate our efforts on the exterior, first floor, then basement. This will allow us adequate time to balance our efforts with construction and marketing of the space.

1133 W. WESTERN AVENUE
OBSOLETE PROPERTY REHAB REQUEST
ATTACHMENT (F)
DESCRIPTION OF ECONOMIC ADVANTAGES

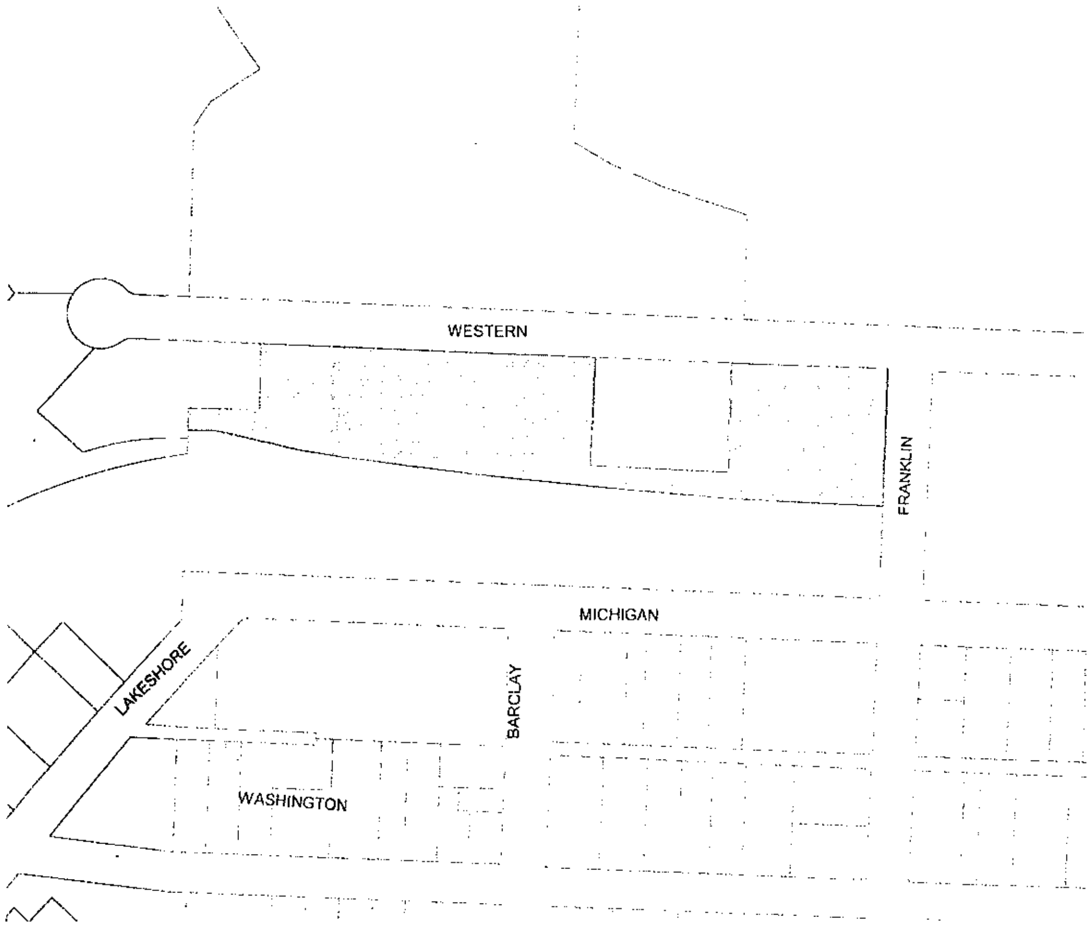
Developers Advantages:
The biggest advantage to the developer is the ability to freeze the tax base where it currently is at, which allows us to inject the necessary capital into property improvements, without the burden of additional property taxes being levied. In todays economy any assistance that is available to help control the operating expenses of a facility like this is appreciated. This exemption allows us to pass savings through to our Tenants, which in turn helps them to establish their business' on a much stronger foundation.

Community Advantages:
The elimination of Blight. This type of assistance is very helpful in returning blighted property to a useful condition again.
Job retention and creation. By putting this facility back into service it provides an opportunity for numerous construction jobs while the project is being completed, and when completed, fully functioning facility for the creation of new jobs for this community.
In turn this will help to strengthen the economic development activity in the surrounding area and create additional tax base through City, State and Federal Income Taxes generated from those employed in this facility and the spin-off jobs created from it.

ATTACHMENT G: Legal Description

CITY OF MUSKEGON REVISED PLAT 1903 BEG NE COR BLK 469 TH S 01D 54M 30S E 200.62 FT TH S 88D 09M 47S W 623.73 FT TH N 81D 23M 46S W 275.72 FT TH N 03D 42M 24S E 10.00 FT TH WLY 43.34 FT ALG THE ARC OF A 795.59 FT RADIUS CURVE TO THE LEFT THE CHORD OF WHICH BEARS N 86D 17M 50S W 43.34 FT TH N 87D 51M 46S W 60.20 FT TH WLY 42.31 FT ALG THE ARC OF A 1071.79 FT RADIUS CURVE TO THE LEFT THE CHORD OF WHICH BEARS N 89D 15M 52S W 42.31 FT TH ALG THE W LN OF LOT 6 OF BLK 470 N 01D 27M 26S W 31.32 FT TH N 88D 12M 06S E 98.69 FT TH ALG THE W LN OF LOT 5 BLK 470 N 01D 28M 04S W 99.32 FT TO THE N LN OF BLK 470 TH N 88D 10M 20S E 504.63 FT ALG THE N LN OF BLKS 469 & 470 TH S 01D 43M 27S E 176.10 FT ALG THE E LN OF THE WLY 10 FT OF THE E 1/3 M/L, OF LOT 7 BLK 469 TH ALG C/L OF VAC ALLEY N 88D 11M 19S E 195.41 FT TH ALG THE W LN OF LOT 2 BLK 469 N 01D 49M 35S W 176.16 FT TH ALG N LN OF BLK 469 N 88D 10M 20S E 240.17 FT TO POB TOGETHER WITH & SUBJ TO AN EASEMENT FOR INGRESS AND EGRESS

Proposed Obsolete Property District
1133 W. Western



Commission Meeting Date: May 9, 2006

Date:	**May 1, 2006**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development**
RE:	**Public Hearing - Request to issue an Obsolete Property Certificate – 1133 W. Western**

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Kirksey Investment Corporation, 1204 W. Western, Muskegon, 49441 has requested the issuance of an Obsolete Property Certificate for the property located at 1133 W. Western, Muskegon, MI. Total capital investment for this project is $500,000. The project consists of converting the building into a warehousing facility. Because of the amount of investment, the applicant is eligible for a 12 year certificate.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

None

COMMITTEE RECOMMENDATION:

None.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2006-43(b)

A resolution approving the application for an Obsolete Property Rehabilitation Exemption Certificate by Kirksey Investment Corporation.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

A. The City Commission has received an Application for an Obsolete Property Rehabilitation Exemption Certificate from Kirksey Investment Corporation, to apply to the improvements located in an Obsolete Property Rehabilitation District established by previous resolution.

B. The City of Muskegon is a qualified local governmental unit as determined by STC Bulletin No. 9 of 2000, dated July 12, 2000.

C. An Obsolete Property Rehabilitation District in which the application property is located was established after hearing on May 9, 2006, being the same date that the district was established.

D. The taxable value of the property proposed to be exempt, plus the aggregate taxable value of properties already exempted under PA 146 of 2000 and under PA 198 of 1974, does not exceed five percent (5%) of the total taxable value of the City of Muskegon.

E. In the event it is determined that the said taxable values do exceed five percent (5%), the City Commission determines further that the said excedence will not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of any affected taxing units.

F. This resolution of approval is considered by the City Commission on May 9, 2006, after a public hearing as provided in Section 4(2) of PA 146 of 2000. The hearing was held on this date.

G. The applicant, Kirksey Investment Corporation, is not delinquent any taxes related to the facility.

H. The exemption to be granted by this resolution is for twelve (12) years.

I. The City Commission finds that the property for which the Obsolete Property Rehabilitation Exemption Certificate is sought is obsolete property within the meaning of Section 2(h) of Public Act 146 of 2000 in that the property, which is commercial, is functionally obsolete. The City has received from the applicant all the items required by Section 9 of the application form, being the general description of the obsolete facility, a general description of the proposed use, a description of the general nature and extent of the rehabilitation to be undertaken, a descriptive list of fixed building equipment that will be part of the rehabilitated facility, a time schedule for undertaking and complete the rehabilitation, and statement of the economic advantages expected from the exemption.

J. Commencement of the rehabilitation has not occurred before the establishment of the district.

K. The application relates to a rehabilitation program that when completed will constitute a rehabilitated within the meaning of PA 146 of 2000 and will be situated within the Obsolete Property Rehabilitation District established by the City under PA 146 of 2000.

L. Completion of the rehabilitated facility is calculated to and will, at the time of the issuance of the Certificate, have the reasonable likelihood to increase commercial activity and create employment; it will revitalize an urban area. The rehabilitation will include improvements aggregating more than ten percent (10%) of the true cash value of the property at the commencement of the rehabilitation.

M. The City Commission determines that the applicant shall have twelve (12) months to complete the rehabilitation. It shall be completed by May 9, 2007, or one year after the Certificate is issued, whichever occurs later.

N. That notice pursuant to statute has been timely given to the applicant, the assessor for the City of Muskegon, representatives of the affected taxing units and the general public.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. Based upon the statements set forth in, and incorporating the recitals to this resolution, the City Commission hereby approves the application filed by Kirksey Investment Corporation., for an Obsolete Property Rehabilitation Exemption Certificate, to be effective for a period of twelve (12) years;

2. BE IT FURTHER RESOLVED, that this resolution of approval relates to the property set forth in Attachment A, the legal description containing the facilities to be improved;

3. BE IT FURTHER RESOLVED, that, as further condition of this approval, the applicant shall comply with the representations and conditions set forth in the recitals above and in the application material submitted to the City.

This resolution passed.

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

Nays: Shepherd

CITY OF MUSKEGON

By Gail A. Kundinger

Gail A. Kundinger, City Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission held on May 9, 2006. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kundinger

Gail A. Kundinger, City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT 1903 BEG NE COR BLK 469 TH S 01D 54M 30S E 200.62 FT TH S 88D 09M 47S W 623.73 FT TH N 81D 23M 46S W 275.72 FT TH N 03D 42M 24S E 10.00 FT TH WLY 43.34 FT ALG THE ARC OF A 795.59 FT RADIUS CURVE TO THE LEFT THE CHORD OF WHICH BEARS N 86D 17M 50S W 43.34 FT TH N 87D 51M 46S W 60.20 FT TH WLY 42.31 FT ALG THE ARC OF A 1071.79 FT RADIUS CURVE TO THE LEFT THE CHORD OF WHICH BEARS N 89D 15M 52S W 42.31 FT TH ALG THE W LN OF LOT 6 OF BLK 470 N 01D 27M 26S W 31.32 FT TH N 88D 12M 06S E 98.69 FT TH ALG THE W LN OF LOT 5 BLK 470 N 01D 28M 04S W 99.32 FT TO THE N LN OF BLK 470 TH N 88D 10M 20S E 504.63 FT ALG THE N LN OF BLKS 469 & 470 TH S 01D 43M 27S E 176.10 FT ALG THE E LN OF THE WLY 10 FT OF THE E 1/3 M/L, OF LOT 7 BLK 469 TH ALG C/L OF VAC ALLEY N 88D 11M 19S E 195.41 FT TH ALG THE W LN OF LOT 2 BLK 469 N 01D 49M 35S W 176.16 FT TH ALG N LN OF BLK 469 N 88D 10M 20S E 240.17 FT TO POB TOGETHER WITH & SUBJ TO AN EASEMENT FOR INGRESS AND EGRESS

Michigan Department of Treasury
3674 (Rev. 6-05)

Application for Obsolete Property Rehabilitation Exemption Certificate

This form is issued as provided by P.A. 146 of 2000. This application should be filed after the district is established. This project will not receive tax benefits until approved by the State Tax Commission. Applications received after October 31 may not be acted upon in the current year. This application is subject to audit by the State Tax Commission.

INSTRUCTIONS: File the original and two copies of this form and the required attachments with the clerk of the local government unit. (The State Tax Commission requires two copies of the Application and attachments. The original is retained by the clerk.) Please see State Tax Commission Bulletin 9 of 2000 for more information about the Obsolete Property Rehabilitation Exemption. The following must be provided to the local government unit as attachments to this application: (a) General description of the obsolete facility (year built, original use, most recent use, number of stories, square footage); (b)General description of the proposed use of the rehabilitated facility, (c) Description of the general nature and extent of the rehabilitation to be undertaken, (d) A descriptive list of the fixed building equipment that will be a part of the rehabilitated facility, (e) A time schedule for undertaking and completing the rehabilitation of the facility, (f) A statement of the economic advantages expected from the exemption.

Applicant (Company) Name (applicant must be the OWNER of the facility) KIRKSEY INVESTMENT CORPORATION		
Company Mailing address (No. and street, P.O. Box, City, State, ZIP code) 1204 W. WESTERN AVENUE, MUSKEGON, MI, 49441		
Location of obsolete facility (No. and street, P.O. Box, City, State, ZIP Code) 1133 W. WESTERN AVENUE, MUSKEGON, MI, 49441		
City, Township, Village (indicate which) CITY OF MUSKEGON	County MUSKEGON	
Date of Commencement of Rehabilitation 6/1/06	Planned date of Completion of Rehabilitation 6/1/07	School District where facility is located (include school code) MUSKEGON PUBLIC-61010
Estimated Cost of Rehabilitation $500,000.00	Number of years exemption requested 12	Attach Legal description of Obsolete Property on separate sheet

Expected project likelihood (check all that apply):

- [x] Increase Commercial activity
- [x] Retain employment
- [x] Revitalize urban areas
- [x] Create employment
- [x] Prevent a loss of employment
- [ ] Increase number of residents in the community in which the facility is situated

Indicate the number of jobs to be retained or created as a result of rehabilitating the facility, including expected construction employment 10

Each year, the State Treasurer may approve 25 additional reductions of half the school operating and state education taxes for a period not to exceed six years. Check the following box if you wish to be considered for this exclusion. [ ]

APPLICANT'S CERTIFICATION

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all of the information is truly descriptive of the property for which this application is being submitted. Further, the undersigned is aware that, if any statement or information provided is untrue, the exemption provided by P.A. 146 of 2000 may be in jeopardy.

The applicant certifies that this application relates to a rehabilitation program that, when completed, constitutes a rehabilitated facility, as defined by P.A. 146 of 2000 and that the rehabilitation of the facility would not be undertaken without the applicant's receipt of the exemption certificate.

It is further certified that the undersigned is familiar with the provisions of P.A. 146 of 2000, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Obsolete Property Rehabilitation Exemption Certificate by the State Tax Commission.

Name of Company Officer (no authorized agents) MICHAEL KIRKSEY	Telephone Number (231) 722-3422	Fax Number (231) 728-9470
Mailing Address 1204 W. WESTERN AVENUE, MUSKEGON, MI 49441		Email Address dkirksey@kirksey.cc
Signature [signature]		Title PRESIDENT

LOCAL GOVERNMENT UNIT CLERK CERTIFICATION

Clerk must also complete Parts 1, 2 and 4 on Page 2. Part 3 to be completed by the assessor.

Signature	Date application received

FOR STATE TAX COMMISSION USE

Application Number	Date Received

LOCAL GOVERNMENT ACTION

This section is to be completed by the clerk of the local governing unit before submitting the application to the State Tax Commission. Include a copy of the resolution which approves the application. All sections must be completed in order to process.

PART 1: ACTION TAKEN

Action Date:______________________________

☐ Exemption Approved for _________ Years, ending December 30, _________ (not to exceed 12 years)

☐ Denied

PART 2: RESOLUTIONS (the following statements must be included in resolutions approving)

A statement that the local unit is a Qualified Local Governmental Unit.

A statement that the Obsolete Property Rehabilitation District was legally established including the date established and the date of hearing as provided by section 3 of P.A. 146 of 2000.

A statement indicating whether the taxable value of the property proposed to be exempt plus the aggregate taxable value of property already exempt under P.A. 146 of 2000 and under P.A. 198 of 1974 (IFT's) exceeds 5% of the total taxable value of the unit.

A statement of the factors, criteria and objectives, if any, necessary for extending the exemption, when the certificate is for less than 12 years.

A statement that the application was approved at a public hearing as provided by section 4(2) of P.A. 146 of 2000 including the date of the hearing.

A statement that the applicant is not delinquent in any taxes related to the facility.

If it exceeds 5% (see above), a statement that exceeding 5% will not have the effect of substantially impeding the operation of the Qualified Local Governmental Unit or of impairing the financial soundness of an affected taxing unit.

A statement that all of the items described on line 9 under "Instructions" (a) through (f) of the Application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the Qualified Local Governmental Unit by the applicant.

A statement that the application is for obsolete property as defined in section 2(h) of Public Act 146 of 2000.

A statement that the commencement of the rehabilitation of the facility did not occur before the establishment of the Obsolete Property Rehabilitation District.

A statement that the application relates to a rehabilitation program that when completed constitutes a rehabilitated facility within the meaning of P.A. 146 of 2000 and that is situated within an Obsolete Property Rehabilitation District established in a Qualified Local Governmental Unit eligible under P.A. 146 of 2000 to establish such a district.

A statement that completion of the rehabilitated facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to, increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility is situated. The statement should indicate which of these the rehabilitation is likely to result in.

A statement that the rehabilitation includes improvements aggregating 10% or more of the true cash value of the property at commencement of the rehabilitation as provided by section 2(l) of P.A. 146 of 2000.

A statement of the period of time authorized by the Qualified Local Governmental Unit for completion of the rehabilitation.

PART 3: ASSESSOR RECOMMENDATIONS

Current Taxable Value and State Equalized Value of obsolete properties

	Taxable Value	State Equalized Value (SEV)
Land		
Buildings		
Buildings on Leased Land		
Other Personal Property		
Prior Year Values		

Name of Local Government Body	Date of Action on application

PART 4: CLERK CERTIFICATION

The undersigned clerk certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way. Further, the undersigned is aware that if any information provided is untrue, the exemption provided by P.A. 146 of 2000 may be in jeopardy.

Name of Clerk	Clerk Signature		Date	
Clerk's Mailing Address	City		State	ZIP Code
	Telephone Number	Fax Number		Email Address

Mail completed application and attachments to: State Tax Commission
Michigan Department of Treasury
P.O. Box 30471
Lansing, Michigan 48909-7971

If you have any questions, call (517) 373-3272.

CITY COMMISSION MEETING May 9, 2006
Agenda Item # ________

COVER PAGE

To:	Mayor and City Commission
From:	Lee J. Slaughter, Assistant City Manager
Date:	May 1, 2006
Re:	Change Order – Hartshorn Marina Renovation Phase III

SUMMARY OF REQUEST:

To post authorize staff's approval (as provided for in the City Purchasing Policy) of Change Order # 3 with Great Lakes Docks and Marina, the Project Contractor, in the amount of $52,475.70 as payment for the repair/rebuilding of the head pier at the east end of the marina docks. While we rarely exercise the authority to pre-approve Change Orders, when we do, it is often due to the timing of the work required to be done – as indeed was the reason for this pre-approval by staff. Completion of this portion of the project will be by the end of May 2006. Payment will also have to be made to Abonmarche Group, the Consulting firm overseeing the project, for necessary drawing and drafting tasks associated with this work.

FINANCIAL IMPACT:

$52,475.70

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To authorize staff to approve Change Order # 3 with Great Lakes Docks and Marina.

Revised 4:30 p.m., 5/2/06

the City. With the renovation of the marina, it is necessary to enforce guidelines that sustain the aesthetic appearance of the facility and more importantly curtail unnecessary risk exposure to patrons and the City. To that end, we are enforcing such existing guidelines – in particular, that the Harbor Master approval is required prior to installing steps off the seawall (if any) to their boats.

Please feel free to contact me if you have questions.

Thank you.

Date: **April 19, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Water Filtration**

RE: **Intake Inspection**

SUMMARY OF REQUEST:

To contract with an underwater contractor to inspect the intake conduit, chemical application piping, intake crib, and replace the wooden louvers on the crib structure.

FINANCIAL IMPACT:

Project cost of $48,676.00

BUDGET ACTION REQUIRED:

Project budgeted at $32,000.00. Additional cost will be addressed by the Water Fund Capitol Improvements budget and identified in the next budget reforecast.

STAFF RECOMMENDATION:

Staff recommends the Mayor and City Commissioners approve entering into a contract with Onyx Underwater Services, Inc, with consideration of the bidding irregularity for additional material removal, at a cost of $48,676.00.

MEMORANDUM

4/19/06

TO: M. AL-SHATEL, DEPUTY DPW

FROM: R. VENEKLASEN, WATER FILTRATION

RE: INTAKE INSPECTION

The intake conduit and crib at the Water Filtration Plant is due for a complete inspection. This type of inspection is performed every three years to ascertain the condition of the pipe, the chemical application system (for zebra mussel control) and the crib structure and mussel growth on the crib. The intake crib and chemical application system is inspected in each of the subsequent two years. The current project bid request includes replacement of the wooden vertical louvers on the crib, removal of any sand or silt at the intake pipe elbow, and removal of the mussel growth on the crib.

This project was bid in concert with the Cities of Holland, Wyoming, and Muskegon Heights in an effort to obtain reduced costs. The bids were to include costs for the City of Muskegon and one, two or three other Cities; alternates A, B, and C.

Bids were directly mailed to eight underwater contractors with responses received from three. The bid results are as follows:

	City	City +1(A)	City +2 (B)	City +3 (C)
Onyx Special Services, Inc. 500 Kennedy Avenue Schererville, IN 46375-1237 219.322.7877	$50,676	$49,676	$48,676	$48,250
Sea Brex Marine 3121 Oak Lane Stevensville, MI 49127 269.429.6100	$49251.50 Sea Brex offered the following breakdown: Inspection: $23,000, louvers: $18251.50, cleaning: $8,000 Additional material removal at $65.00 per cu. ft.			
Solomon Diving, Inc. Did not submit a bid for this project.				
US Underwater Services, L.P. 101 NE Haskew Burleson, TX 76028	$96,000	$95,250	$94,500	$94,500

The City of Wyoming has elected to have Sea Brex Marine perform their inspection. The cities of Holland and Muskegon Heights have chosen Onyx to perform their inspections. Given the decision by Holland and Muskegon Heights, Onyx becomes the low bidder for the City of Muskegon at a cost of $48, 676.00. However, Onxy did not include a cost for any additional sand/silt removal beyond the base bid of the initial 50cu. ft.

Although Onyx omitted the cubic foot cost for removal of any additional material they have indicated they would perform this removal, if necessary, at the cost quoted by Sea Brex Marine. Based on this information it is my recommendation that theMayor and City Commission forgive this irregularity and endorse the bid of $48,676.00 from Onxy Special Services, Inc.

Commission Meeting Date: May 9, 2006

Date: **May 2, 2006**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Resolution to sale 247 E. Walton**

SUMMARY OF REQUEST: To approve the attached resolution to sell the city owned house at 247 E. Walton to Ms. Doris Harris, of 1259 McLaughlin, Muskegon for the expected appraised value of $145,000 minus the $49,000 subsidy.

The house at 247 E. Walton is a part of the second phase of the Walton Street Renaissance AKA Hilltop View. Which was started last summer and will be totally completed in the next 30 days. The Hilltop View project was the first time that the Community and Neighborhood Services office had attempted a development, which consisted of more than one property. With the sale of this property at 247 E. Walton five of the six homes in the development will have been purchased.

The Walton Street project is a partnership between the City of Muskegon, Fifth Third Bank and Neighborhood Investment Corporation. It is the hope of all those involved in the Walton Street Renaissance project that it will be an anchor for additional redevelopment in the adjacent area. As we continue to prepare and cultivate our community for 21st Century living.

FINANCIAL IMPACT: The program income derived from this transaction will be deposited in the City's HOME account minus the funds owed Fifth Third Bank that was used to construct the new street in the area.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and the sale of 247 Walton to Ms. Doris Harris.

COMMITTEE RECOMMENDATION: The Walton Street Project was approved by both the City Commission and the Land Reutilization Committee


'06 3 29

MUSKEGON CITY COMMISSION

2006-44(c)

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY STATE OWNED PROPERTY AT 247 Walton

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

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

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

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the purchase of the current City owned home at 247 Walton for the estimated price of $145,000 minus the subsidy to Ms. Doris Harris. After purchasing the house Ms. Harris will be required to live there for the duration of the affordability period or reimburse the city based on the agreement.
Adopted this 9th day of May 2006

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

Nays: None

By ____________________
Stephen J. Warmington, Mayor

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

2006-44(c)

CERTIFICATION

This resolution was adopted at a regular meeting of the City Commission, held on May 9, 2006. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, MMC
City Clerk

QUIT-CLAIM DEED

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

QUIT CLAIMS TO: **Doris Harris** of 1259 McLaughlin Muskegon, Michigan 49441,

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

CITY OF MUSKEGON REVISED PLAT OF 1903 PART OF LOTS 2 & 3 BLK 200 COM AT SWLY COR LOT 6 SD BLK 200 TH N 53D 46M 06S E ALG NWLY LN OF ALLEY A DIST OF 214.94 FT TO POB TH N 36D 00M 26S W A DIST OF 141.43FT TH N 53D 40M 34S E ALG NWLY LN SD BLK 200 A DIST OF 80.26 FT TH S 36D 00M 26S E A DIST OF 141.56 FT THE S 53D 46M 00S W ALG NWLY LN SD ALLEY A DIST OF 80.26 FT TO POB

for the estimated sum of One Hundred Forty five thousand and no/100 Dollars ($145,000.00)

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

Dated this _____ day of ______________________, 200___.

CITY OF MUSKEGON

By [signature]
Stephen J. Warmington, Mayor

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

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 16th day of May, 2006, by Stephen J. Warmington and Gail A. Kundinger, MMC, Mayor and City Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

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

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

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

Date: May 9, 2006

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Consideration of Proposal to Construct 200'of 8" Main @ Sherman & Beach

---

SUMMARY OF REQUEST:

Authorize staff to accept Jackson Merkey's proposal to place approximately 200' of 8" water main section along with other necessary items to connect the existing 6" dead-end main on Sherman to that that being constructed to serve the Ideal Wild area. The proposed section of main will provide a direct connection to the 30" main on the east side of Beach and in the process improve the flow in the mains within the area west of Beach and north of Sherman. Jackson Merkey is being recommended for two main reasons:

1- the proposed cost of $21,726 is very reasonable for the amount of work involved
2- Jackson Merkey is already on site for the Ideal Wild project and therefore eliminating a possible additional cost for mobilization.

FINANCIAL IMPACT:

The construction cost of $21,726.

BUDGET ACTION REQUIRED:

None, the cost will be covered by the $100,000 budgeted for "Water Main Replacement Projects.

STAFF RECOMMENDATION:

Authorize staff to accept Jackson Merkey's proposal for the work to be done in May of 06.

COMMITTEE RECOMMENDATION:

JACKSON-MERKEY
CONTRACTORS, INC.

555 E. Western Avenue • Muskegon, Michigan 49442 - 1039
Phone (231) 728-9344 • FAX (231) 726-2060

Kelly DeFrench
City of Muskegon, DPW
1350 E. Keating Ave
Muskegon, MI 49442
Fax: 231 722 4188

April 19, 2006

BID PROPOSAL FOR:

SHERMAN- BEACH WATERMAIN EXTENSION

Jackson-Merkey Contractors proposal for this project is based on the following scope of work:

INCLUDED:

- Mobilization
- Construction of 225LF 8" D.I. watermain
- D.I fittings, restraints, 6"x 6" tapping sleeve and valve
- Testing of watermain per City standards
- Street removal
- Street replacement, 8" 22A gravel and 2 lifts 1.5" Bituminous Paving
- Traffic Control
- Misc. restoration

NOT INCLUDED:

- Materials testing
- City tap fee
- Water sample tests
- Pavement Markings

Watermain materials installed and tested per above are $12,625.00.
Removal and restorations of streets per above is $9,100.00.

Jackson-Merkey Contractors' total price for the work as defined above is **$ 21,725.00.** Payment terms are net due 30 days from billing date.

Thank you for this opportunity to bid this work.

Craig Studeman

Commission Action # 2006-440

Kelly DeFrench

AGENDA ITEM NO. ____________

CITY COMMISSION MEETING 12/14/99

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: December 7, 1999

RE: 2000 Salary Schedule and Fringe Benefits for Non-Represented Employees and the 2000 Salary Schedule for Part-Time and Limited-Term Employees

SUMMARY OF REQUEST:

1) To establish the 2000 salary ranges for part-time and limited-term employees;
2) To approve and adopt the proposed salary ranges and salary schedules for the non-represented administrative, technical, professional, and supervisory employees for 2000 (2.0% increase) plus a one-time $500 lump sum payment.
3) To increase the pension multiplier from 2.1% to 2.25%;
4) To increase the match by $250 (currently $500) per year of employee contributions into one of the City's approved Deferred Compensation Programs for employees who agree to fully participate in the City's Direct Deposit program.
5) Increase Life Insurance to two times salary up to a maximum of $200,000 (currently one times salary up to $65,000);
6) To approve various improvements in benefits for permanent/part-time non-represented employees.

FINANCIAL IMPACT:

1) Varies depending on the number of hours each employee works.
2) The salary increases will cost approximately $77,500 plus approximately $19,375 in added fringe benefit costs.
3) The cost of the pension improvement is approximately 1.9% of payroll.
4) The Deferred Compensation match will not be more than $13,750.
5) The increased cost for the life insurance improvement is $8,300.
6) The cost will be minimal (there are only four [4] such employees).

BUDGET ACTION REQUIRED:

To authorize the necessary 2000 budgetary amendments and transfer of money from the affected City funds (Contingency Account for General Fund) to the appropriate salary and fringe benefit accounts to accommodate the salary increases and fringe benefit adjustments.

STAFF RECOMMENDATION:

1) To approve the proposed 2000 salary ranges for part-time and limited-term employees;
2) To approve and adopt the proposed 2000 salary ranges, salary schedules, and fringe benefits for non-represented employees; and
3) To approve the proposed schedule of benefits for permanent/part-time non-represented employees.

COMMITTEE RECOMMENDATION:

The Committee of the Whole will consider this request at their meeting on 12/13/99.

AGENDA ITEM NO. ____________

CITY COMMISSION MEETING 12/12/00

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: December 4, 2000

RE: 2001 Salary Schedule and Fringe Benefits for Non-Represented Employees and the 2001 Salary Schedule for Part-Time and Limited-Term Employees

SUMMARY OF REQUEST:

1) To establish the 2001 salary ranges for part-time and limited-term employees;
2) To approve and adopt the proposed salary ranges and salary schedules for the non-represented administrative, technical, professional, and supervisory employees for 2001 (3.25% increase).
3) To change the pension age and service requirements from 55/30 to 55/25;
4) To increase the match by $250 (currently $750) per year of employee contributions into one of the City's approved Deferred Compensation Programs for employees who agree to fully participate in the City's Direct Deposit program.
5) To change the vision plan to allow for glasses or contact replacement every 12 months instead of 24 months.

FINANCIAL IMPACT:

1) Varies depending on the number of hours each employee works.
2) The salary increases will cost approximately $81,250 plus approximately $20,325 in added fringe benefit costs.
3) The cost of the pension improvement is approximately 1.33% of payroll.
4) The Deferred Compensation match will not be more than $13,500.
5) Cost is $3,340 annually.

BUDGET ACTION REQUIRED:

To authorize the necessary 2001 budgetary amendments and transfer of money from the affected City funds (Contingency Account for General Fund) to the appropriate salary and fringe benefit accounts to accommodate the salary increases and fringe benefit adjustments.

STAFF RECOMMENDATION:

1) To approve the proposed 2001 salary ranges for part-time and limited-term employees;
2) To approve and adopt the proposed 2001 salary ranges, salary schedules, and fringe benefits for non-represented employees.

COMMITTEE RECOMMENDATION:

None

O:COMMON\DEPTMENT\ADMIN\AGNDAFRM
JMS – O: (2001-SALARY AGENDA COVER SHEET)

#21

CITY OF MUSKEGON

DEFERRED COMPENSATION MATCH PROGRAM

PARTICIPATION AGREEMENT

FOR NON-UNION EMPLOYEES

I, (print name)____, accept the City of Muskegons' offer to match my annual deferred compensation contribution amount. I agree to contribute (check one only):

- ☐ At least $250.00 to qualify for a $250.00 ($9.62 bi-weekly) match from the City of Muskegon.
- ☐ At least $500.00 to qualify for a $500.00 ($19.23 bi-weekly) match from the City of Muskegon.
- ☐ At least $750.00 to qualify for a $750.00 ($28.85 bi-weekly) match from the City of Muskegon. I understand I must agree to fully participate in the City's payroll Direct Deposit program. (Attach Direct Deposit form on back if not currently full direct deposit).
- ☐ At least $1,000.00 to qualify for a $1,000.00 ($38.46 bi-weekly) match from the City of Muskegon. I understand I must agree to fully participate in the City's payroll Direct Deposit program. (Attach Direct Deposit form on back if not currently full direct deposit).

My contribution together with the City's match should be allocated as follows:

- ☐ ICMA ________________
- ☐ Hartford ________________

Signature____ Date______________

Social Security No.____________________

THIS FORM MUST BE RETURNED TOGETHER WITH ALL OTHER NECESSARY FORMS FOR ENROLLMENT OR INCREASES IN EITHER OF THE CITY'S DEFERRED COMP PROGRAMS TO THE FINANCE DEPARTMENT. PLEASE CONTACT CANDY BAKER (724-6789) IF YOU HAVE QUESTIONS.