

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 8, 2007

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. Recommendations for the Various Boards and Committees. CITY CLERK
 - C. Approval of the Use and Maintenance of City-Owned Property at 1232 Pine Street for a Garden by David O'Neal. PLANNING & ECONOMIC DEVELOPMENT
 - D. Nine Month Extension to Construct a Single-Family Home at 318 Meeking Street. PLANNING & ECONOMIC DEVELOPMENT
 - E. Agreement for Engineering Services. ENGINEERING
 - F. Altitude and Relief Valve Rebuilding. WATER FILTRATION
 - G. Agreement with Harbor Unitarian Universalist Congregation. ASSISTANT CITY MANAGER
 - H. Assistant to Firefighters Grant Proposal. DEPUTY DIRECTOR OF PUBLIC SAFETY
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:

- A. Highway Easement for Shoreline Drive. CITY MANAGER
- B. Matching Grant Application Funding. DEPARTMENT OF PUBLIC WORKS
- C. METRO Act Request from NextG Telephone Company. ASSISTANT CITY MANAGER

❑ **ANY OTHER BUSINESS:**

❑ **PUBLIC PARTICIPATION:**

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

❑ **ADJOURNMENT:**

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

Date: May 8, 2007
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, April 24th.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 8, 2007

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 8, 2007.

Mayor Warmington opened the meeting with a prayer from Elder George Monroe from the Evanston Avenue Baptist 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 City Clerk Ann Marie Becker

2007-38 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 24th.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Recommendations for the Various Boards and Committees. CITY CLERK

SUMMARY OF REQUEST: Concur with the Community Relations Committee to approve the following:

Public Relations Committee: - Accept the resignation of Connolly Jenkins and appoint Duane Barnes to the committee with term expiring January 31, 2010.

Equal Opportunity Committee: - Accept the resignation of Glenn Edwards and appoint a member whose term will expire January 31, 2009.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

COMMITTEE RECOMMENDATION: The Community Relations Committee made the recommendations at its May 7, 2007 meeting.

C. Approval of the Use and Maintenance of City-Owned Property at 1232 Pine Street for a Garden by David O'Neal. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the use and maintenance of the City owned property located at 1232 Pine Street for a community garden. The property is an unbuildable lot and is adjacent to Mr. O'Neal's residence. The City would retain the right to sell the property with Mr. O'Neal having time to remove the garden prior to any sales. Mr. O'Neal has proposed a vegetable garden with flowers. The neighborhood residents will be involved in the garden and the maintenance with him. All gardening tools will be stored off site. There will be no permanent structures on the site. Mr. O'Neal has committed to maintaining the garden with the neighbors.

FINANCIAL IMPACT: None. By having the maintenance agreement with David O'Neal, the City would not need to maintain the property while the garden is at the location.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution and maintenance agreement.

D. Nine Month Extension to Construct a Single-Family Home at 318 Meeking Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve a nine month extension to allow Mr. Juan & Mrs. Antoinette Ware to complete construction of a single-family home on Meeking Street. The original agreement between the City and Mr. & Mrs. Ware stipulated that construction of the home was to be completed within 18 months. The City has customarily granted extensions to persons who have shown that they are dedicated to completing construction and contributing to the beautification of the City's residential areas. Mr. & Mrs. Ware have closed on their construction loan and are working with Paul Witek Builders for the construction of their home.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the time extension, as well as authorization for both the Mayor and the Clerk to sign the resolution.

E. Agreement for Engineering Services. ENGINEERING

SUMMARY OF REQUEST: Authorize staff to enter into an agreement with Cecil

Scott to provide assistant to the engineering department in the capacity of a Civil Engineer I. As you may recall, Mr. Scott worked for the City for over 37-years until retiring last month as a Civil Engineer. This short term contract, if approved, is necessary to overcome the shortage in experienced staff needed to provide construction engineering.

Furthermore, it is respectfully requested that staff be authorized to extend and/or terminate said agreement to best serve the City.

FINANCIAL IMPACT: Approximately \$16,000 based on estimated 800 hours of work.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Mr. Scott.

F. Altitude and Relief Valve Rebuilding. WATER FILTRATION

SUMMARY OF REQUEST: To authorize rebuilding of two altitude valves and one pressure relief valve at the Harvey Street Booster Station/Reservoir concurrently with the similar Muskegon Township valves.

FINANCIAL IMPACT: The cost to rebuild the City's three valves is \$12,500.

BUDGET ACTION REQUIRED: This activity was not specifically budgeted and will require a budget line transfer.

STAFF RECOMMENDATION: Staff recommends approval of this work by Franklin Holwerda Company.

G. Agreement with Harbor Unitarian Universalist Congregation. 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, juices and bottle water at the Muskegon Farmers Market. The Church is a member of the Friends of the Market.

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

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: This is the second year agreement with the Harbor Unitarian Universalist Congregation. It is recommended that the Commission approve this request.

H. Request to Provide Matching Funds for Assistance to Firefighters Grant Proposal. DEPUTY DIRECTOR OF PUBLIC SAFETY

STAFF RECOMMENDATION: Fire Department staff is requesting approval by the

Commission to spend up to \$8000 as the ten percent matching funds for a federal Assistance to Firefighters Grant. This grant, if approved, will be used to upgrade the Department's ice rescue capability by replacing an aging hovercraft with an airboat.

FINANCIAL IMPACT: Funds for the matching portion of the grant would come from the Fire Equipment Improvement Fund. To date the Muskegon Fire Department has received approximately \$350,000 of firefighting, rescue, and safety equipment from the Assistance to Firefighters Grant Program for an investment of \$35,000.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

Motion by Commissioner Carter, second by Vice Mayor Gawron to approve the Consent Agenda as read.

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

Nays: None

MOTION PASSES

2007-39 NEW BUSINESS:

A. Highway Easement for Shoreline Drive. CITY MANAGER

SUMMARY OF REQUEST: To approve the Highway Easement for Shoreline Drive with Michigan Department of Transportation (MDOT). This easement is necessary to facilitate a jurisdictional transfer of Muskegon/Webster and Shoreline Drive.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the conveyance of the Highway Easement and authorize the Mayor to sign the easement.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the conveyance of the Highway Easement for Shoreline Drive and authorize the Mayor to sign the easement.

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

Nays: None

MOTION PASSES

B. Matching Grant Application Funding. DEPARTMENT OF PUBLIC WORKS

SUMMARY OF REQUEST: The approval of \$5,000 as the City's part for a matching

grant from the Coastal Management Program. The City will buy 370' of portable barrier-free beach access extension decking, and local interests will provide a \$25,000 in-kind services. The Coastal Management Program will match the total with \$30,000 grant.

FINANCIAL IMPACT: \$5,000 to be solicited from local services. We may have an initial commitment of \$2,000. Should funds not become available, we will match the local share with the Equipment Fund and lease it back to the Parks.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: The Staff recommends approval.

Motion by Commissioner Carter, second by Commissioner Wierengo to approve the matching grant application funding.

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

Nays: None

MOTION PASSES

C. METRO Act Request from NextG Telephone Company. ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: Authorized the Mayor to sign the permit application submitted by NextG Networks to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and microcellular antennas, on, over, and under the public right-of-way with the City in connection with the provisions of telecommunications services provided by NextG to its wireless operator customers.

It is requested that approval be conditioned upon City staff's satisfactory review of all documentation that are required to accompany this request.

FINANCIAL IMPACT: None. (NextG Networks paid the required \$500 permit fee.)

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the permit and authorize the Mayor to sign the document.

Motion by Vice Mayor Gawron, second by Commissioner Carter to authorize the Mayor to sign the permit application submitted by NextG Networks conditional upon City staff's satisfactory review of all documentation.

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

Nays: None

MOTION PASSES

D. Approval of Resolution to Submit Healthy Homes Lead Grant

SUMMARY OF REQUEST: To approve the resolution and instruct the Community and Neighborhood Services Department to complete grant to the U.S. Department of Housing and Urban Development for the Healthy Homes Lead Abatement for a possible 3 million dollars.

FINANCIAL IMPACT: The City could receive up to 3 million dollars for lead abatement for homes in the City of Muskegon.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution.

COMMITTEE RECOMMENDATION: The City Commission approved earlier this year for the Community and Economic Development Department to work with an assigned consultant to prepare the grant.

Motion by Commissioner Spataro, second by Commissioner Carter to approve the resolution to submit Healthy Homes Lead Grant.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Spataro thanked Larry DeCou and staff for the new trees on Southern Avenue. Commissioner Davis stated the Farmers' Market opened Saturday. Commissioner Shepherd mentioned the passing of Craig Brown.

ADJOURNMENT: The City Commission Meeting adjourned at 5:47 p.m.

Respectfully submitted,



Ann Marie Becker, MMC
City Clerk

Date: May 1, 2007
To: Honorable Mayor and City Commissioners
From: Community Relations Committee
RE: Recommendations for the Various Boards and Committees

SUMMARY OF REQUEST: Concur with the Community Relations Committee to approve the following:

Public Relations Committee: – Accept the resignation of Connolly Jenkins and appoint a member whose term will expire January 31, 2010.

Equal Opportunity Committee – Accept the resignation of Glenn Edwards and appoint a member whose term will expire January 31, 2009.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION: The Community Relations Committee will make a recommendation at its May 7, 2007 meeting.

Commission Meeting Date: May 8, 2007

Date: April 24, 2007

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department *abc*

RE: Approval of the Use & Maintenance of City Owned Property at 1232 Pine Street for a garden by David O'Neal.

SUMMARY OF REQUEST:

To approve the use and maintenance of the City owned property located at 1232 Pine Street for a community garden. The property is an unbuildable lot and is adjacent to Mr. O'Neal's residence. The City would retain the right to sell the property with the Mr. O'Neal having time to remove the garden prior to any sales. Mr. O'Neal has proposed a vegetable garden with flowers. The neighborhood residents will be involved in the garden and the maintenance with him. All gardening tools will be stored off site. There will be no permanent structures on the site. Mr. O'Neal has committed to maintaining the garden with the neighbors.

FINANCIAL IMPACT:

None. By having the maintenance agreement with David O'Neal, the City would not need to maintain the property while the garden is at the location.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the attached resolution and to authorize both the Mayor and the Clerk to sign said resolution and maintenance agreement.

COMMITTEE RECOMMENDATION:

None.

Resolution No. 2007-38(c)

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE USE AND MAINTENANCE OF ONE UNBUILDABLE LOT AT 1232 PINE STREET NEIGHBORHOOD.

WHEREAS, David O'Neal, member of the Healthy Neighborhood Committee be allowed to use and maintain the parcel designated as parcel number 24-205-251-0002-00, located at 1232 Pine Street; and

WHEREAS, the City would reserve the right to sell the property and give David O'Neal time to remove the garden prior to any sale; and

WHEREAS, the maintenance would relieve the City from having to maintain the property and the maintenance costs while the garden is there; and

NOW THEREFORE BE IT RESOLVED, that parcel number 24-205-251-0002-00, located at 1232 Pine be maintained for a community garden by David O'Neal.

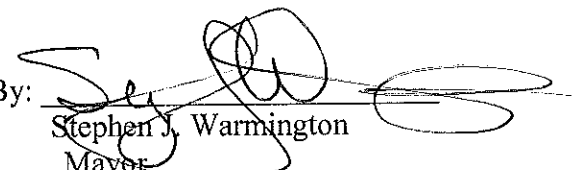
**CITY OF MUSKEGON REVISED PLAT OF 1903 N 1/2 LOT 2 & S 4 FT OF W
1/2 LOT 1 BLK 251**

Adopted this 8th day of May, 2007

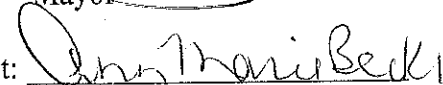
Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, Spataro, and
Warmington

Nays: None

Absent: None

By: 

Stephen J. Warmington
Mayor

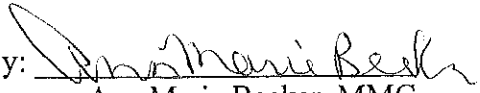
Attest: 

Ann Marie Becker, MMC
City Clerk

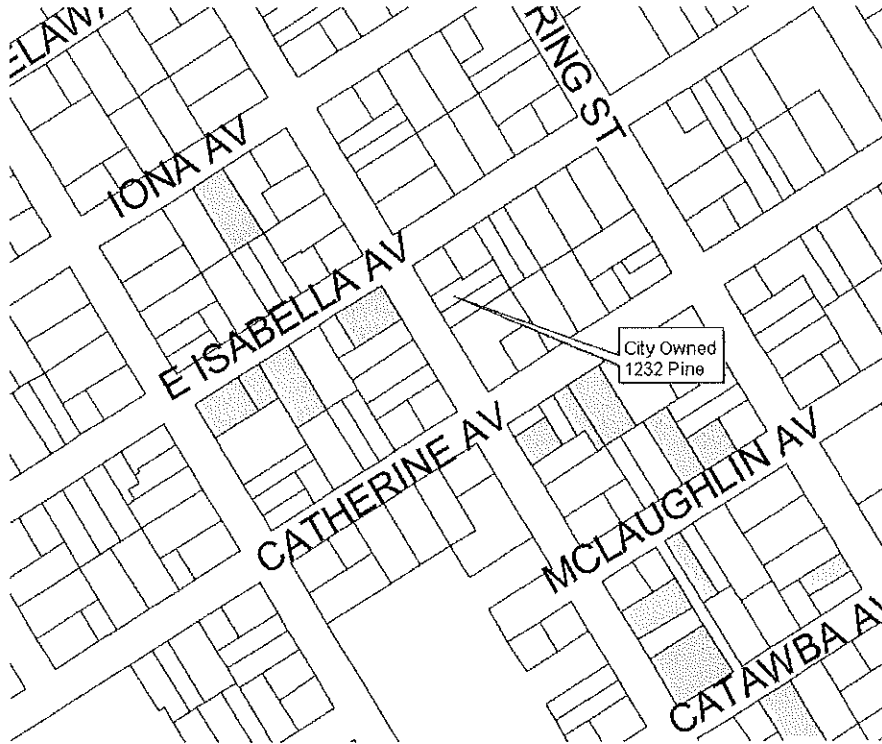
CERTIFICATION

2007-38(c)

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on May 8, 2007.

By: 
Ann Marie Becker, MMC
City Clerk

1232 Pine Garden



Maintenance Agreement

This Agreement is made May 1, 2007 ("Effective Date"), by and between the **City of Muskegon** ("City"), of 933 Terrace Street, Muskegon, Michigan 49440, and David O'Neal, Muskegon, Michigan, 49442.

Background

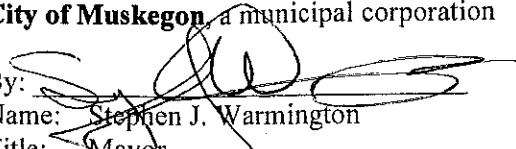
- A. "City" is the owner of the vacant lot located at 1232 Pine Street ("Property").
- B. The parties wish to enter into an agreement regarding the installation and maintenance of a flower garden located at the Property.
- C. Individual has agreed to perform the installation and physical maintenance of the garden at the Property pursuant to the terms set forth in this maintenance agreement.

Therefore, the parties agree as follows:

1. **General Agreement.** Individual agrees, at the sole cost of the Individual, to perform the installation and physical maintenance of a flower garden at the Property.
2. **Site Design.** Individual shall submit a garden design for the Property, and receive design approval from the City, prior to installation. City agrees not to unreasonably withhold its approval of the garden design. Any necessary permits or variances (fencing, lighting, electrical, plumbing, etc.) are the responsibility of the Individual and not the City and must be obtained prior to performing any work.
3. **Maintenance.** Individual shall be responsible for the physical installation of the flower garden and continuing maintenance of the Property, including i) mowing, trimming, fertilizing, weed control and any other routine maintenance of the grass, trees, shrubs and plantings at the Property, and ii) trash and litter removal from the Property.
4. **Buildable Lot.** City retains the right to sell the property at any time without prior notice to the Individual. In the event the property is sold, City shall notify the Individual, who shall have 30 days to remove any plantings and other items installed by the Individual.
5. **Term.** This maintenance agreement shall continue in effect until terminated by either party. Upon termination, Individual waives any claim against City for installation or maintenance of any item on the Property.
6. **Insurance.** Should the Individual place any items (picnic tables, grills, etc.) that are to remain on the property for an extended period of time, the Individual must purchase liability insurance and provide proof of the insurance to the City.
7. **Hold Harmless.** Individual shall indemnify, defend and save City harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property arising from any occurrence in or about the Property or from the occupancy or use by Individual of the Property or any part thereof or resulting in whole or part from any act or omission of Individual, its employees, invitees, licensees, contractors or agents. City shall not be liable for any injury to the person or property of Individual or any other persons on the Property resulting from the criminal or negligent acts of third persons occurring on or nearby the Property.

[signatures appear on following page]

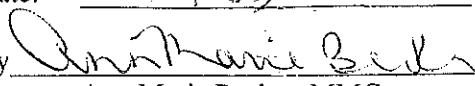
City of Muskegon, a municipal corporation

By: 

Name: Stephen J. Warmington

Title: Mayor

Date: 5-5-07

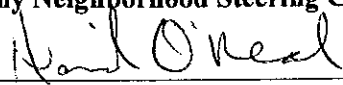
By: 

Name: Ann Marie Becker, MMC

Title: Clerk

Date: 5-8-07

Healthy Neighborhood Steering Committee



Name: David O'Neal, member

Date: 4/17/07

Commission Meeting Date: May 8, 2007

Date: April 25, 2007
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department *CBC*
RE: Nine Month Extension to Construct a Single Family Home
at 318 Meeking Street.

SUMMARY OF REQUEST:

To approve a nine month extension to allow Mr. Juan & Mrs. Antoinette Ware to complete construction of a single-family home on Meeking Street. The original agreement between the City and Mr. & Mrs. Ware stipulated that construction of the home was to be completed within 18 months. The City has customarily granted extensions to persons who have shown that they are dedicated to completing construction and contributing to the beautification of the City's residential areas. Mr. & Mrs. Ware have closed on their construction loan and are working with Paul Witek Builders for the construction of their home.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the time extension, as well as authorization for both the Mayor and the Clerk to sign the attached resolution.

COMMITTEE RECOMMENDATION:

None.

Resolution No. 2007-38(d)

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING A NINE MONTH EXTENSION TO COMPLETE THE
CONSTRUCTION OF A SINGLE-FAMILY HOME LOCATED AT 318 MEEKING STREET**

WHEREAS, Mr. & Mrs. Ware have submitted a request for a time extension; and

WHEREAS, Mr. & Mrs. Ware has shown a commitment to complete the construction of the home with their closing of the construction loan and the selection of a builder; and

WHEREAS, the completion of the construction of the home will further enhance the ambiance of the City's residential area.

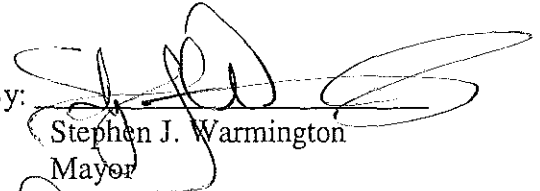
NOW THEREFORE BE IT RESOLVED, that Mr. & Mrs. Ware be granted an additional nine months to complete the construction of the home located at 318 Meeking Street.

Adopted this 8th day of May 2007.

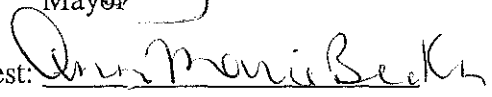
Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, Spataro, and
Warmington

Nays: None

Absent: None

By: 

Stephen J. Warmington
Mayor

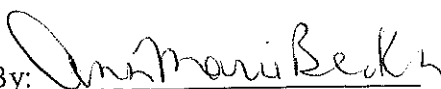
Attest: 

Ann Marie Becker, MMC
Clerk

CERTIFICATION

2007-38(d)

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on May 8, 2007.

By: 
Ann Marie Becker, MMC
Clerk

Date: May 8, 2007

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Agreement for Engineering Services

SUMMARY OF REQUEST:

Authorize staff to enter into an agreement, copy of which is attached, with Cecil Scott to provide assistant to the engineering department in the capacity of a Civil Engineer I. As you may recall, Mr. Scott worked for the City for over 37-years until retiring last month as a Civil Engineer. This short term contract, if approved, is necessary to overcome the shortage in experienced staff needed to provide construction engineering.

Furthermore, it is respectfully requested that staff be authorized to extend and/or terminate said agreement to best serve the city.

FINANCIAL IMPACT:

Approximately \$16,000 based on estimated 800-hours of work.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Mr. Scott.

COMMITTEE RECOMMENDATION:

AGREEMENT FOR ENGINEERING SERVICES

This agreement is made between the CITY OF MUSKEGON ("City"), and CECIL SCOTT ("Scott") concerning engineering services.

THE PARTIES AGREE AS FOLLOWS:

1.0 CONCERNING ENGINEERING SERVICES

- 1.1 Ericksen agrees to perform, under the general direction of the City Engineer and the administrative supervision of the City Manager, the recruitment, selection, classification, promotion and discipline of all classified employees of the City. Mr. Scott agrees to perform the Civil Engineer's duties as outlined in the job description for such classification.
- 1.2 By this agreement Scott is appointed, for its term, as a Civil Engineer for the City of Muskegon.
- 1.3 Scott will perform said services at such times that are reasonably necessary as directed by the City Engineer to carry out his commitments, obligations and services contracted for.

2.0 COMPENSATION FOR SERVICES

- 2.1 The City will compensate Scott \$20.00 per hour. Scott shall complete a time sheet for time spent and the City shall pay Scott based upon said time sheets.
- 2.2 Scott shall not be liable while performing the work under this contract.

3.0 TERM AND TERMINATION

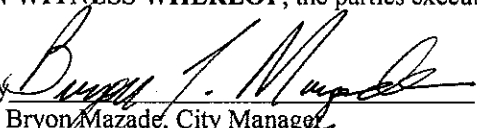
- 3.1 This agreement is effective 05/14/2007, and will continue until 10/01/2007 unless terminated and/or extended. Renewals or extensions may occur on mutually acceptable terms.
- 3.2 The City reserves the right to terminate this agreement upon a two week written notice to Scott.

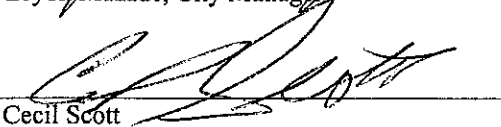
4.0 GENERAL AND SPECIFIC CONDITIONS

- 4.1 Scott agrees that he is an independent contractor. He is required by this contract only to render services at such times and on such schedules as agreed upon between Scott and the City Engineer. Scott acknowledges that he is not an employee, that he has no rights to continuing benefits, withholding of FICA contributions, tax withholding, unemployment, workers compensation, additional pension credits, insurance for active employees or other employment fringe rights or benefits, and that his compensation is limited to the hourly compensation set forth above. This acknowledgment does not affect any benefits Scott may have as a retiree of the City.
- 4.2 Scott agrees to exercise his best effort to avoid representation of any person, party, or entity in any cause contrary to the interest of the City. He will also desist from representing any person, party, or entity on any matter in which the City is or may become an opposing party.

IN WITNESS WHEREOF, the parties execute this agreement this 9 day of May, 2007.

By


Bryon Mazade, City Manager


Cecil Scott

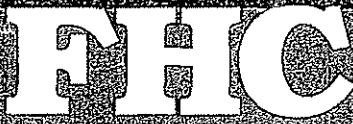
Date: May 8, 2007
To: Honorable Mayor and City Commission
From: Water Filtration Plant
RE: Altitude and Relief Valve Rebuilding

SUMMARY OF REQUEST: To authorize rebuilding of two altitude valves and one pressure relief valve at the Harvey Street Booster Station/Reservoir concurrently with the similar Muskegon Township valves.

FINANCIAL IMPACT: The cost to rebuild the City's three valves is \$12,500.00.

BUDGET ACTION REQUIRED: This activity was not specifically budgeted and will require a budget line transfer.

STAFF RECOMMENDATION: Staff recommends approval of this work by Franklin Holwerda Company.



MECHANICAL • SHEET METAL • FIRE PROTECTION • SERVICE

April 19, 2007

Mr. Kevin Herbert

City of Muskegon Water Treatment Plant
1900 Beach Street
Muskegon, MI 49441

Re: Muskegon WTP
Harvey St Valve Rebuild

Dear Kevin:

We have reviewed the existing valves at the station and offer the following:

1. Renew the internal composite parts for the two (2) 16" Cla-Val's, (2) 16" Ross valves and (2) 8" Ross surge valves.
2. Replace the external piping and valves for the control portion of the (2) 16" Cla-Val's and (2) 16" Ross valves, complete. This includes all the piping, solenoids, speed controls for each. All four valves will be piped for pump check valve configuration.
3. Remove and install (4) new 1" air release valves at each pump.

Total price for this work is \$25,000

Normal delivery for all parts is about 2-3 weeks.

We have not included any internal seats, discs, brass sleeves, etc since hopefully the existing are in good shape. If we find out different upon disassembly, these are shelf items from both manufacturers.

Also not included are the limit switches on top of the control valves or any wiring.

All work has been quoted to be done during normal work hours.

Some of the control piping and accessories will be ordered from local suppliers to keep the cost down, also.

Included is assistance with startup with your personnel.

We appreciate the opportunity to quote this work and if you have any questions, please call.

Very Truly Yours,

David B. Reynhout

MEMORANDUM

4/30/07

TO: M. AL-SHATEL, DEPUTY DPW

FROM: R. VENEKLASSEN, WATER FILTRATION

RE: HARVEY ALTITUDE AND PRESSURE RELIEF VALVES

The Harvey Street Reservoir contains four pumps with corresponding altitude valves and pressure relief valves. One-half, or two, of these pumps and valves are owned by Muskegon Township; the others are owned by the City. The City's Water Filtration Plant operates the pumps according to water demand in either water distribution system.

Recently the Township installed variable frequency drive starters on their two pumps. This allows the two pumps to operate at a lesser output relative to the systems water needs. The altitude valves on these pumps are of different vintages: 1964 and 1987. These valves operated sufficiently well when the pump ran at 100% output. However, the pumps no longer operate in that fashion thereby magnifying any inefficiencies or operational problems.

As the agency contracted to operate this station on behalf of the Township; we solicited a price quote to rebuild the three valves for their system. We selected Franklin-Holwerda Company based on their familiarity with the site, our past experience rebuilding an altitude valve for the City, and approval by Muskegon Township. Giving consideration to the City's equipment of the same age, we determined concurrently rebuilding those valves owned by the City would be the most cost effective method. Muskegon Township has committed to proceed with this work and the contractor has begun the process of gathering the parts and supplies for the Township portion of the work.

Included is the quotation from Franklin-Holwerda Company for the rebuilding of all four altitude valves and two pressure relief valves at the Harvey Street Booster Station. The cost of repairs as indicated on this quotation will be divided evenly between Muskegon Township and the City. It is my recommendation that we proceed with these repairs.

This work was not specifically budgeted for so will require a budget line item transfer/adjustment in the next budget reforecast update.

CITY COMMISSION AGENDA ITEM _____
CITY COMMISSION MEETING DATED May 1, 2007

MEMORANDUM

To: Mayor and City Commissioners
From: Lee J. Slaughter, Assistant City Manager
Date: May 1, 2007
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, juices and bottle water at the Muskegon Farmers Market. The Church is a member of the Friends of the Market.

FINANCIAL IMPACT:

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

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

This is the second year agreement with the Harbor Unitarian Univesalist Congregation. It is recommended that the Commission approve this request.

LICENSE AGREEMENT

THIS AGREEMENT made May 8, 2007, 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 5, 2007 and shall terminate December 19, 2007 (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 \$50 to \$100 per day (Saturdays). Licensee shall make payments to the City of Muskegon on the first of the month beginning July through December, 2007, with any additional amounts owed by Licensee on December 28. 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, Juices and Bottle Water.*** The Licensee is permitted to sell Fair Trade Coffee, Bake Goods, Tea, Soft Drinks, Juices 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) 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.

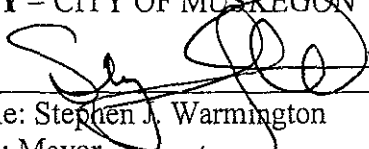
26. **Notices.** Notices under this agreement shall be mailed first class mail as follows:

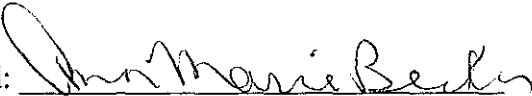
CITY OF MUSKEGON
Attn: Assistant City Manger
933 Terrace Street
Muskegon, Michigan 49440

Harbor Unitarian Universalist Congregation
1296 Montgomery Avenue
Muskegon, MI 49442

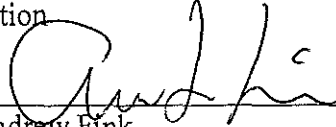
IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CITY – CITY OF MUSKEGON

By: 
Name: Stephen J. Warmington
Title: Mayor
Date: 5/15/07, 2007

and: 
Name: Ann Marie Becker, MMC
Title: Clerk
Date: 5-15, 2007

**LICENSEE – Harbor Unitarian Universalist
Congregation**

By: 
Name: Andrew Fink
Title: President/Chairman
Date: 5/14, 2007

CITY COMMISSION MEETING
Tuesday, May 8, 2007

TO: Honorable Mayor and City Commissioners

FROM: Mark Kincaid
Deputy Director of Public Safety

DATE: May 3, 2007

SUBJECT: Request to Provide Matching Funds for Assistance to Firefighters Grant

SUMMARY OF REQUEST:

Fire Department staff is requesting approval by the Commission to spend up to \$8000 as the ten percent matching funds for a federal Assistance to Firefighters Grant. This grant, if approved, will be used to upgrade the Department's ice rescue capability by replacing an aging hovercraft with an airboat.

FINANCIAL IMPACT:

Funds for the matching portion of the grant would come from the Fire Equipment Improvement Fund. To date the Muskegon Fire Department has received approximately \$350,000 of firefighting, rescue, and safety equipment from the Assistance to Firefighters Grant Program for an investment of \$35,000.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATIONS:

Approval

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: April 30, 20007

RE: Highway Easement for Shoreline Drive

SUMMARY OF REQUEST:

To approve the Highway Easement for Shoreline Drive with Michigan Department of Transportation (MDOT). This easement is necessary to facilitate a jurisdictional transfer of Muskegon/Webster and Shoreline Drive.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the conveyance of the Highway Easement and authorize the Mayor sign the easement.

COMMITTEE RECOMMENDATION:

HIGHWAY EASEMENT
TO THE MICHIGAN DEPARTMENT OF TRANSPORTATION
This information required by P.A. 286 of 1964

MDOT 0638 (12/02)

The Grantors City of Muskegon, a Michigan municipal corporation
whose address is: 933 Terrace Muskegon, Michigan 49445
for the sum of Zero dollars (donation)
conveys to the Michigan Department of Transportation, whose address is Lansing, Michigan, an easement for highway purposes in, over, and upon the real estate located in the City of Muskegon, County of Muskegon, State of Michigan, described as:

-SEE ATTACHED LEGAL DESCRIPTIONS-

Subject to the following: This conveyance includes the consent of the grantors to the removal at any time of such tress, shrubs and vegetation as, in the judgment of the Michigan Department of Transportation, is necessary to the construction and maintenance of the highway. Notice to the grantors of the removal by the Michigan Department of Transportation of such trees, shrubs, and vegetation is not required. The grantors agree that no tress, shrubs or vegetation shall be cut or removed from the highway right of way easement by the grantors, their heirs, successors and assigns, without the written permission of the Michigan Department of Transportation. The grantors agree for themselves, their heirs, successors and assigns, that no billboard, or advertising device, shall be erected, permitted or maintained on the right of way as described.

PROPERTY TAX CODE NUMBER: multiple tax numbers, reflecting right of way acquisition by the City of Muskegon

CONTROL SECTION: 61151	PARCEL:	NAME: City of Muskegon
JOB NUMBER: 59527C	FED ITEM NUMBER: N/A	FEDERAL PROJECT NUMBER: N/A

Signed this 9th day of May, 2007

For the City of Muskegon:

Irene Dempsey
Witness Irene Dempsey

Stephen J. Warmington
Grantor: Stephen J. Warmington, Mayor

Linda Potter
Witness Linda Potter

Ann Marie Becker
Grantor: Ann Marie Becker, City Clerk

CORPORATE ACKNOWLEDGMENT

STATE OF MICHIGAN

County of: Muskegon

The foregoing instrument was acknowledged before me this 14th Day of May, 2007,

by Stephen J. Warmington and Ann Marie Becker
Name of Officer Name of Officer

the Mayor and City Clerk respectively
Title of officer Title of officer

Of City of Muskegon a local government, on behalf of the
Name of Corporation/partnership/entity Type of entity

Corporation/partnership/entity.

Linda Potter Muskegon, Michigan 9-25-2012
NOTARY PUBLIC Linda Potter COUNTY COMMISSION EXPIRES

DRAFTED BY: Peter Loftis

When recorded return to:
Michigan Department of Transportation
1420 Front Avenue NW
Grand Rapids, MI 49504

An easement for highway purposes located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71), being in Sections 19, 20 and 30, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 2509.76 feet along the construction centerline of U.S. 31-BR (Seaway Drive) to a point on the South line of Block 343 and POINT OF BEGINNING;

thence North 87° 58' 39" West 164.49 feet along the South line of Block 343;

thence North 02° 02' 53" East 28.00 feet along the West line of land described and recorded in Liber 1668, Page 86;

thence North 50° 00' 00" West 26.00 feet;

thence North 13° 12' 38" West 145.93 feet;

thence North 51° 43' 44" East 14.00 feet along the Southeasterly line of Lot 8, Block 343;

thence North 38° 02' 28" West 39.00 feet along the Southwesterly line of land described and recorded in Liber 1808, Page 212;

thence North 17° 47' 27" West 656.31 feet;

thence North 51° 39' 37" East 38.15 feet along the Northwesterly line of Block 320;

thence North 17° 47' 27" West 51.01 feet along a line located 34.00 feet Southwesterly of and parallel with the survey centerline of Southbound Shoreline Drive, to the point of curvature of a 658.98 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 167.78 feet (chord bearing North 10° 29' 48" West, chord distance 167.32 feet) to the point of tangency of said curve, the arc of said curve being 34.00 feet Westerly of and parallel with the survey centerline of Southbound Shoreline Drive;

thence North 03° 12' 09" West 73.40 feet;

thence North 41° 39' 11" West 32.98 feet to the Southeasterly line of lands described and recorded in Liber 2014, Page 13;

thence Northeasterly along the Southeasterly line of said lands described and recorded in Liber 2014, Page 13 for the following 6 courses:

1) thence Northeasterly along the arc of a 997.91 foot radius curve to the right a distance of 356.47 feet (chord bearing North 26° 27' 20" East, chord distance 354.57 feet) to the point of tangency of said curve;

2) thence North 36° 41' 20" East 1881.50 feet to the point of curvature of a 2064.81 foot radius curve to the left;

3) thence Northeasterly along the arc of said curve a distance of 489.72 feet (chord bearing North 29° 53' 39" East, chord distance 488.58 feet) to the point of tangency of said curve;

4) thence North 23° 05' 59" East 142.33 feet to the point of curvature of a 3281.02 foot radius curve to the right;

5) thence Northeasterly along the arc of said curve a distance of 299.54 feet (chord bearing North 25° 42' 54" East, chord distance 299.44 feet) to the point of tangency of said curve;

6) thence North 28° 19' 50" East 786.85 feet to a point located North 61° 13' 10" West, 1553.43 feet along the Northerly line of Terrace Street and the extension thereof and South 28° 19' 50" West 467.88 feet from the most Southerly corner of Block 556;

thence South 61° 41' 12" East 0.14 feet;

thence North 28° 18' 48" East 94.81 feet to the point of curvature of a 741.94 foot radius curve to the right;

thence Northeasterly and Easterly along the arc of said curve a distance of 854.05 feet (chord bearing North 61° 17' 23" East, chord distance 807.67 feet) to the point of tangency of said curve;

thence South 85° 44' 02" East 1271.26 feet to the point of curvature of 1296.90 foot radius curve to the left;

thence Easterly along the arc of said curve a distance of 253.36 feet (chord bearing North 88° 40' 10" East, chord distance 252.96 feet);

thence South 06° 55' 37" East 9.62 feet;

thence South 28° 55' 00" West 10.60 feet;

thence South 39° 55' 00" East 11.80 feet;

thence South 85° 53' 00" East 227.28 feet;

thence South 72° 28' 00" East 37.40 feet;

thence South 88° 34' 00" East 60.00 feet;

thence North 88° 11' 25" East 202.97 feet to the Southwest corner of Lot 10, Block 170;

thence South 88° 14' 33" East 181.71 feet along the South line of Block 170 to the point of curvature of a 669.24 foot radius curve to the left;

thence Easterly and Northeasterly along the arc of said curve a distance of 447.14 feet (chord bearing North 56° 23' 46" East, chord distance 438.87 feet) and being along the Northwestern line of the land described and recorded in Liber 3228, Page 334 and along the Southeasterly line of the land described and recorded in Liber 3727, Page 378;

thence South 64° 02' 24" East 25.46 feet along the Northeasterly line of Lot 5, Block 169, to a point on the existing Westerly right of way line of Highway U.S. 31-BR (Seaway Drive);

thence South 25° 57' 40" West 257.62 feet along the Westerly right of way line of U.S.31-BR (Seaway Drive), said line located 50.00 feet Westerly of and parallel with the construction centerline of Southbound U.S. 31-BR (Seaway Drive);

thence South 33° 28' 26" West 76.48 feet;

thence South 25° 57' 40" West 170.55 feet along the Westerly right of way line of U.S. 31-BR (Seaway Drive), said line located 60.00 feet Westerly of and parallel with the construction centerline of Southbound U.S. 31-BR (Seaway Drive);

thence South 58° 44' 32" West 73.99 feet along the Northwestern line of Block 179;

thence North 77° 53' 58" West 48.06 feet to intersection of centerline of vacated Clay Avenue with Easterly line of Ottawa Street extended, and being along the South line of the land described and recorded in Liber 2086, Page 812;

thence North 25° 55' 33" East 3.00 feet along the Easterly line of Ottawa Street, extended;

thence North 68° 24' 24" West 66.18 feet;

thence South 25° 55' 33" West 21.00 feet along the Easterly line of Block 172;

thence North 30° 59' 39" West 37.00 feet along the Southwesterly line of Block 172;

thence North 77° 58' 09" West 90.27 feet;

thence South 30° 59' 39" East 22.00 feet along the Northeasterly line of Block 173;

thence North 85° 42' 57" West 329.92 feet along the North line of the land described and recorded in Liber 3014, Page 084;

thence North 00° 31' 20" West 27.82 feet along a boundary line of the land described and recorded in Liber 3014, Page 084;

thence North 85° 42' 57" West 112.54 feet;

thence South 58° 23' 08" West 46.25 feet along the Southeasterly line of Block 554;

thence North 30° 47' 16" West 37.15 feet along the Southwesterly line of the land described and recorded in Liber 2111, Page 269;

thence North 85° 42' 57" West 181.35 feet along the Northerly line of the land described and recorded in Liber 2316, Page 495, and along the Southerly line of the land described and recorded in Liber 2316, Page 493, to a boundary corner described and recorded in said Liber 2316, Page 493;

thence South 71° 58' 50" West 79.93 feet;

thence North 40° 42' 58" West 41.10 feet along the Easterly line of land described and recorded in Liber 3706, Page 484;

thence North 85° 42' 57" West 1010.87 feet along the North line of land described and recorded in Liber 3706, Page 484;

thence South 82° 05' 31" West 122.80 feet;

thence North 42° 00' 10" West 37.53 feet along the Easterly line of land described and recorded in Liber 3492, Page 546;

thence North 85° 42' 57" West 147.27 feet along the North line of said land recorded in Liber 3492, Page 546, to the point of curvature of a 707.99 foot radius curve to the left;

thence Westerly and Southwesterly along the arc of said curve a distance of 495.61 feet (chord bearing South 74° 13' 48" West, chord distance 485.55 feet), along the Northerly and Northwesterly line of said land recorded in Liber 3492, Page 546, and the continuation thereof;

thence Westerly along the arc of a 177.47 foot radius curve to the left a distance of 2.00 feet (chord bearing South 80°28' 06" West, chord distance 2.00 feet), along the North line of land described and recorded in Liber 1124, Page 209, to a point located 18.52 feet Easterly along said 177.47 foot radius curve (chord

bearing North 77° 09' 21" East, chord distance 18.51 feet) from Point 6, as shown and recorded in Liber 1124, Page 211;

thence Southwesterly along the arc of a 705.32 foot radius curve to the left a distance of 44.83 feet (chord bearing South 51° 53' 03" West, chord distance 44.82 feet), being also along the Southeasterly line of the land described and recorded in Liber 3424, Page 163, to a point on the Northwesterly line of the land described and recorded in Liber 1124, Page 209, said point located Southwesterly along the arc of a 715.32 foot radius curve to the left a distance of 29.18 feet (chord bearing South 36° 10' 10" West, chord distance 29.18 feet) from Point 6, as shown and recorded in Liber 1124, Page 211;

thence continuing Southwesterly along the arc of a 713.26 foot radius curve to the left a distance of 107.43 feet (chord bearing South 30° 40' 56" West, chord distance 107.33 feet) to the point of tangency of said curve and being along the Northwesterly line of the land described and recorded in Liber 1124, Page 209 and the Southeasterly line of the land described and recorded in Liber 2013, Page 57;

thence South 26° 22' 02" West 254.17 feet along the Northwesterly line of the land described and recorded in Liber 1124, Page 209, and along the Southeasterly line of the land described and recorded in Liber 2013, Page 57;

thence South 61° 02' 29" East 20.50 feet along the Southwesterly line of Block 562;

thence South 12° 38' 51" West 37.51 feet along the Easterly line of Lot 10, Block 563;

thence North 61° 02' 29" West 84.79 feet along a line located 66.00 feet Southwesterly of and parallel with the Southwesterly line of the land described and recorded in Liber 1124, Page 209;

thence South 28° 19' 50" West 758.63 feet along the Easterly line of the land described and recorded in Liber 1123, Page 415;

thence South 16° 23' 26" West 121.54 feet, to a point located Southeasterly 34.00 feet from the survey centerline of Northbound Shoreline Drive;

thence continuing Southwesterly along a line located 34.00 feet Southeasterly of and parallel with the survey centerline of Northbound Shoreline Drive for the following 4 courses:

1) thence Southwesterly along the arc of a 772.66 foot radius curve to the right a distance of 224.30 feet (chord bearing South 21° 18' 59" West, chord distance 223.51 feet) to the point of tangency of said curve;

2) thence South 29° 37' 58" West 209.52 feet to the point of curvature of a 1117.91 foot radius curve to the right;

3) thence Southwesterly along the arc of said curve a distance of 216.39 feet (chord bearing South 35° 10' 41" West, chord distance 216.05 feet) to the point of tangency of said curve, also being the point of curvature of a 5176.30 foot radius curve to the left;

4) thence Southwesterly along the arc of said curve a distance of 221.84 feet (chord bearing South 39° 29' 44" West, chord distance 221.83 feet);

thence North 38° 16' 18" West 11.31 feet along the Southwesterly line of Block 567;

thence Southwesterly along the arc of a 5187.29 foot radius curve to the left a distance of 145.59 feet (chord bearing South 37° 29' 35" West, chord distance 145.58 feet), being also along the existing Southeasterly right of way line of Shoreline Drive, said line being 23.00 feet Southeasterly of and parallel with the survey centerline of Northbound Shoreline Drive, to the point of tangency of said curve;

thence South 36° 41' 20" West 329.62 feet along the existing Southeasterly right of way line of Shoreline Drive;

thence South 38° 23' 42" East 11.54 feet along the Southwesterly line of the Northeasterly 63.00 feet of Block 570;

thence South 36° 41' 20" West 487.73 feet along a line located 34.15 feet Southeasterly of and parallel with the survey centerline of Northbound Shoreline Drive;

thence South 30° 57' 16" West 118.58 feet

thence South 36° 41' 20" West 130.61 feet;

thence South 41° 06' 00" West 130.77 feet to a point on the Southeasterly line of Block 570;

thence South 36° 35' 38" West 256.09 feet to a point on the Northwesterly line of Block 318, said point located South 51° 24' 53" West 80.00 feet from the Northerly corner of Block 318;

thence South 36° 47' 46" West 246.77 feet along the Easterly line of the land described and recorded in Liber 1668, Page 93;

thence South 17° 54' 26" West 94.14 feet along the Easterly line of the land described and recorded in Liber 1668, Page 93, to a point on the Southwesterly line of Block 318 located North 38° 13' 29" West 25.00 feet from the Southerly corner of Lot 1, Block 318;

thence South 01° 48' 49" East 111.18 feet;

thence South 38° 13' 29" East 94.92 feet along the Northeasterly line of Block 319 to the Easterly corner of Block 319;

thence South 38° 08' 01" East 66.00 feet to the Northerly corner of Block 320;

thence South 38° 02' 35" East 303.25 feet along the Northeasterly line of Block 320 to the Easterly corner of Block 320;

thence South 38° 02' 33" East 66.00 feet to the Northerly corner of Block 341;

thence South 38° 02' 30" East 284.91 feet along the Northeasterly line of Block 341 to the Easterly corner of Block 341;

thence South 38° 08' 50" East 66.00 feet to the Northerly corner of Block 344;

thence South 38° 15' 08" East 104.21 feet along the Northeasterly line of Block 344;

thence South 81° 23' 35" West 75.94 feet to the midpoint of the Southwesterly line of Lot 1;

thence South 26° 07' 42" West 73.20 feet to a point on the Southwesterly line of Lot 2, said point located 35.00 feet Northwesterly of the Southerly corner of Lot 2;

thence South 38° 14' 48" East 0.20 feet along the Southwesterly line of said Lot 2;

thence South 30° 11' 12" West 94.77 feet to a point on the Northwesterly line of the alley in Block 344;

thence South 02° 17' 47" West 83.06 feet along the East line of Glade Street extended;

thence North 87° 51' 04" West 66.00 feet along the North line of Glade Street to the Northeast corner of Lot 6, Block 343;

thence South 02° 17' 47" West 106.39 feet to the Southeast corner of Lot 6, Block 343;

thence South 61° 16' 00" West 67.91 feet along the Southeasterly line of Block 343;

thence North 87° 58' 39" West 5.81 feet along the South line of Block 343 to the point of beginning;

EXCEPT any and all dedicated right of way.

All distances are grid distances. Grid distances divided by 0.99992 = ground distance.

The following descriptions pertain to the highway alignments for Shoreline Drive, as surveyed for the jurisdictional transfer between the Michigan Department of Transportation (MDOT) and the City of Muskegon. MDOT is to assume highway jurisdiction for Shoreline Drive; and the City is to assume highway jurisdiction of the current US-31 Business Route that is commonly known as Muskegon Avenue (northeasterly one-way) and Webster Avenue (southwesterly one-way).

ALIGNMENTS

SOUTHBOUND SHORELINE DRIVE SURVEY CENTERLINE

Shoreline Drive Southbound survey centerline alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71), being in Sections 19, 20 and 30, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence North 88° 00' 21" West 51.00 feet along the centerline of Southern Avenue to the POINT OF BEGINNING of the Shoreline Drive Southbound survey centerline alignment;

thence North 02° 17' 47" East 52.73 feet to the point of curvature of a 9820.36 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 328.55 feet (chord bearing North 01° 20' 16" East, chord distance 328.54 feet) to the point of tangency of said curve;

thence North 00° 22' 46" East 220.94 feet to the point of curvature of a 1437.18 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 455.77 feet (chord bearing North 08° 42' 20" West, chord distance 453.87 feet) to the point of tangency of said curve;

thence North 17° 47' 27" West 787.15 feet to the point of curvature of a 624.95 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 594.23 feet (chord bearing North 09° 26' 57" East, chord distance 572.10 feet) to the point of tangency of said curve;

thence North 36° 41' 20" East 1582.95 feet to the point of curvature of a 5264.30 foot radius curve to the right;

thence Northeasterly along the arc of said curve a distance of 370.69 feet (chord bearing North 38°42' 22" East, chord distance 370.62 feet) to the point of tangency of said curve, also being the point of curvature of a 1029.91 foot radius curve to the left;

thence Northeasterly along the arc of said curve a distance of 199.36 feet (chord bearing North 35° 10' 41" East, chord distance 199.05 feet) to the point of tangency of said curve;

thence North 29° 37' 58" East 221.16 feet to the point of curvature of a 605.04 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 175.64 feet (chord bearing North 21° 18' 59" East, chord distance 175.03 feet) to the point of tangency of said curve, also being the point of curvature of a 1025.28 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 273.72 feet (chord bearing North 20° 38' 54" East, chord distance 272.91 feet) to the point of tangency of said curve;

thence North 28° 17' 48" East 856.60 feet to the point of curvature of a 723.50 foot radius curve to the right;

thence Northeasterly and Easterly along the arc of said curve a distance of 833.25 feet (chord bearing North 61° 17' 25" East, chord distance 787.96 feet) to the point of tangency of said curve;

thence South 85° 42' 57" East 641.76 feet to the point of curvature of a 6561.14 foot radius curve to the right;

thence Easterly along the arc of said curve a distance of 335.33 feet (chord bearing South 84° 15' 06" East, chord distance 335.30 feet) to the point of tangency of said curve;

thence South 82° 47' 15" East 177.21 feet to the point of curvature of a 6561.16 foot radius curve to the left;

thence Easterly along the arc of said curve a distance of 335.34 feet (chord bearing South 84° 15' 07" East, chord distance 335.31 feet) to the point of tangency of said curve;

thence South 85° 42' 58" East 490.94 feet to the point of curvature of a 770.94 foot radius curve to the left;

thence Easterly and Northeasterly along the arc of said curve a distance of 919.31 feet (chord bearing North 60° 07' 21" East, chord distance 865.80 feet) to the POINT OF ENDING, said point of ending being located Westerly 12.00 feet from the U.S. 31-BR (Seaway Drive) Southbound alignment.

NORTHBOUND SHORELINE DRIVE SURVEY CENTERLINE

Shoreline Drive Northbound survey centerline alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71), being in Sections 19, 20 and 30, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence South 88° 00' 21" East 27.00 feet along the centerline of Southern Avenue to the POINT OF BEGINNING of the Shoreline Drive Northbound survey centerline alignment;

thence North 02° 17' 47" East 52.31 feet to the point of curvature of a 9817.97 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 328.46 feet (chord bearing North 01° 20' 17" East, chord distance 328.45 feet) to the point of tangency of said curve, also being the point of curvature of a 9005.56 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 328.68 feet (chord bearing North 00° 39' 58" West, chord distance 328.66 feet) to the point of tangency of said curve;

thence North 01° 42' 42" West 460.65 feet to the point of curvature of a 876.92 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 487.04 feet (chord bearing North 17° 37' 22" West, chord distance 480.81 feet) to the point of tangency of said curve;

thence North 33° 32' 02" West 205.24 feet to the point of curvature of a 449.96 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 551.48 feet (chord bearing North 01° 34' 39" East, chord distance 517.61 feet) to the point of tangency of said curve;

thence North 36° 41' 20" East 1606.09 feet to the point of curvature of a 5210.29 foot radius curve to the right;

thence Northeasterly along the arc of said curve a distance of 366.89 feet (chord bearing North 38° 42' 22" East, chord distance 366.81 feet) to the point of tangency of said curve, also being the point of curvature of a 1083.91 foot radius curve to the left;

thence Northeasterly along the arc of said curve a distance of 209.81 feet (chord bearing North 35° 10' 41" East, chord distance 209.48 feet) to the point of tangency of said curve;

thence North 29° 37' 58" East 209.52 feet to the point of curvature of a 738.66 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 214.43 feet (chord bearing North 21° 18' 59" East, chord distance 213.68 feet) to the point of tangency of said curve, also being the point of curvature of 884.61 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 236.17 feet (chord bearing North 20° 38' 54" East, chord distance 235.47 feet) to the point of tangency of said curve;

thence North 28° 17' 48" East 790.75 feet to the point of curvature of a 743.94 foot radius curve to the right;

thence Northeasterly and Easterly along the arc of said curve a distance of 856.80 feet (chord bearing North 61° 17' 25" East, chord distance 810.22 feet) to the point of tangency of said curve;

thence South 85° 42' 57" East 2106.57 feet to the point of curvature of a 736.73 foot radius curve to the left;
thence Easterly and Northeasterly along the arc of said curve a distance of 878.53 feet (chord bearing North 60° 07' 21" East, chord distance 827.39 feet) to the POINT OF ENDING, said point of ending being located Westerly 12.00 feet from the U.S. 31-BR (Seaway Drive) Northbound alignment.

WEBSTER AVENUE – SOUTHBOUND ALIGNMENT

Webster Avenue Southbound alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71) and being in Section 30, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence North 88° 00' 21" West 27.00 feet along the centerline of Southern Avenue to the POINT OF BEGINNING of the Webster Avenue southbound alignment;

thence North 02° 17' 47" East 52.60 feet to the point of curvature of a 9844.36 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 329.36 feet (chord bearing North 01° 20' 17" East, chord distance 329.35 feet) to the point of tangency of said curve;

thence North 00° 22' 46" East 220.93 feet to the point of curvature of a 1461.18 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 463.39 feet (chord bearing North 08° 42' 21" West, chord distance 461.45 feet) to the point of tangency of said curve, also being the point of curvature of a 575.44 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 697.30 feet (chord bearing North 16° 55' 25" East, chord distance 655.41 feet) to the POINT OF ENDING.

MUSKEGON AVENUE – NORTHBOUND ALIGNMENT

Muskegon Avenue Northbound alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71) and being in Section 30, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence South 88° 00' 21" East 39.00 feet along the centerline of Southern Avenue to the POINT OF BEGINNING of the Muskegon Avenue northbound alignment;

thence North 02° 17' 47" East 52.25 feet to the point of curvature of a 9826.51 foot radius curve to the left;

thence Northerly along the arc of said curve a distance of 328.74 feet (chord bearing North 01° 20' 17" East, chord distance 328.73 feet) to the point of tangency of said curve, also being the point of curvature of a 9826.94 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 328.74 feet (chord bearing North 01° 20' 17" East, chord distance 328.73 feet to the point of tangency of said curve;

thence North 02° 17' 47" East 238.07 feet to the point of curvature of a 572.91 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 494.29 feet (chord bearing North 27° 00' 46" East, chord distance 479.10 feet) to the POINT OF ENDING.

U.S. 31-BR (SEAWAY DRIVE) SOUTHBOUND ALIGNMENT

U.S. 31-BR (Seaway Drive) southbound survey centerline alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71) and being in Section 20, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence North 41° 54' 49" East 6643.62 feet to the POINT OF BEGINNING of the U.S. 31-BR (Seaway Drive) southbound survey centerline alignment;

said POINT OF BEGINNING also being located South 88° 06' 54" East 175.38 feet along the South line of Section 20 and North 01° 53' 06" East 1419.95 feet from the Southwest corner of Section 20;

said POINT OF BEGINNING also being a point on the centerline of Webster Avenue located North 58° 44' 47" East 66.45 feet from the intersection of the centerline of Webster Avenue with the centerline of Spring Street;

thence Northeasterly along the arc of a 818.43 foot radius curve to the left a distance of 468.32 feet (chord bearing North 42° 21' 13" East, chord distance 461.96 feet) to the point of tangency of said curve;

thence North 25° 57' 40" East 1298.45 feet to a POINT OF ENDING.

U.S. 31-BR (SEAWAY DRIVE) NORTHBOUND ALIGNMENT

U.S. 31-BR (Seaway Drive) northbound survey centerline alignment located in the Revised Plat of 1903 of the City of Muskegon (recorded in Liber 3 of Plats, Page 71) and being in Section 20, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, State of Michigan, described as follows:

Commencing at the Southwest corner of Section 30, Town 10 North, Range 16 West; thence South 88° 05' 48" East 827.55 feet along the South line of said Section; thence North 02° 17' 47" East 1646.57 feet along the construction centerline of U.S. 31-BR (Seaway Drive); thence North 44° 55' 46" East 6524.65 feet to the POINT OF BEGINNING of the U.S. 31-BR (Seaway Drive) northbound survey centerline alignment;

said POINT OF BEGINNING also being located South $88^{\circ} 06' 54''$ East 181.53 feet along the South line of Section 20 and North $01^{\circ} 53' 06''$ East 1101.14 feet from the Southwest corner of Section 20;

said POINT OF BEGINNING also being a point on the centerline of Muskegon Avenue located North $58^{\circ} 46' 38''$ East 43.47 feet from the intersection of the centerline of Muskegon Avenue with the centerline of Spring Street;

thence Northeasterly along the arc of a 818.42 foot radius curve to the left a distance of 655.54 feet (chord bearing North $35^{\circ} 49' 51''$ East, chord distance 638.15 feet);

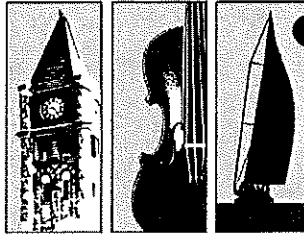
thence North $12^{\circ} 53' 05''$ East 328.79 feet to the point of curvature of a 1909.67 foot radius curve to the right;

thence Northerly along the arc of said curve a distance of 435.83 feet (chord bearing North $19^{\circ} 25' 22''$ East, chord distance 434.89 feet) to the point of tangency of said curve;

thence North $25^{\circ} 57' 40''$ East 577.94 feet to a POINT OF ENDING.

All distances are grid distances. Grid distances divided by 0.99992 = ground distance.

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

Agenda Item No. _____

Date: May 1, 2007
To: Honorable Mayor and City Commission
From: Department of Public Works
RE: Matching Grant Application Funding

SUMMARY OF REQUEST:

The approval of \$5,000 as the City's part for a matching grant from the Coast Management Program. The City will buy 370' of portable barrier-free beach access extension decking, and local interests will provide a \$25,000 in-kind services. The Coastal Management Program will match the total with \$30,000 grant.

FINANCIAL IMPACT:

\$5,000.00 to be solicited from local services. We may have an initial commitment of \$2,000. Should funds not become available, we will match the local share with the Equipment Fund and lease it back to the Parks.

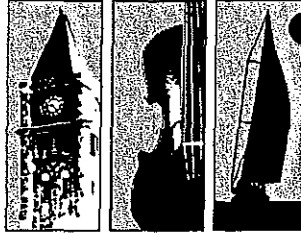
BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

The Staff recommends approval.

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

Resolution No. 2007-39(b)
City of Muskegon Commission

RESOLUTION APPROVING SUBMISSION OF COASTAL GRANT APPLICATION FOR PORTABLE BARRIER-FREE BEACH ACCESS EXTENSION DECKING - PERE MARQUETTE PARK

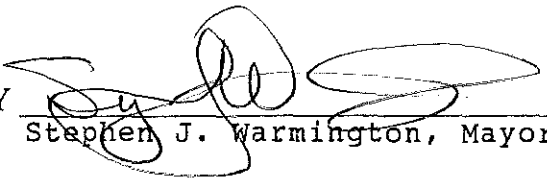
- WHEREAS, Lake Michigan's water level has dropped, exposing more beach area, and
- WHEREAS, the current portable barrier-free beach access decking only reaches one-third of the way from the parking area to the water, and
- WHEREAS, funding is available from the U.S. Department of Commerce through the Coastal Management Program, and
- WHEREAS, total project cost is estimated at about \$60,000, 50% of which would be funded through the Coastal Program and 50% would be a local match of funding and in-kind services;
- NOW, THEREFORE, BE IT RESOLVED, that the City Commission approves the submission of the grant application to the Michigan Coastal Management Program in the amount of \$60,000 for the portable barrier-free access decking extensions and improvements to Pere Marquette Park Beach and commits that the local match shall be provided if the project is funded.

ADOPTED: May 8, 2007

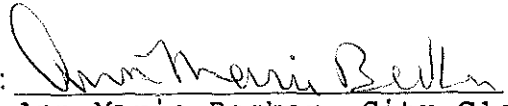
AYES: Gawron, Shepherd, Spataro, Warmington, Wierengo, Carter,
and Davis

NAYS: None

BY


Stephen J. Warmington, Mayor

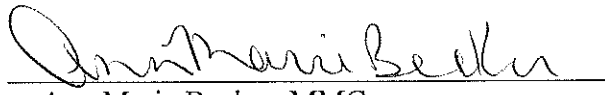
ATTEST:


Ann Marie Becker, City Clerk

CERTIFICATION
2007-39(b)

This resolution was adopted at a regular meeting of the City Commission, held on May 8, 2007. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By: 
Ann Marie Becker, MMC
City Clerk

AGENDA ITEM _____
CITY COMMISSION MEETING 5/8/07

TO: Mayor and City Commission

FROM: Lee Slaughter, Assistant City Manager
Mohammed Al-Shatel, Deputy Director of Public Works

DATE: May 2, 2007

RE: METRO (Metropolitan Extension Telecommunications Rights-of-Way
Oversight) Act Request – Application from NextG Networks

SUMMARY OF REQUEST

Authorize the Mayor to sign the permit application submitted by NextG Networks to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and microcellular antennas, on, over, and under the public right-of-way within the City in connection with the provisions of telecommunications services provided by NextG to its wireless operator customers.

It is requested that approval be conditioned upon City staff's satisfactory review of all documentation that are required to accompany this request.

FINANCIAL IMPACT

None. (NextG Networks paid the required \$500.00 permit fee.)

BUDGET ACTION REQUIRED

None.

STAFF RECOMMENDATION

To approve the permit and authorize the Mayor to sign the document.

COMMITTEE RECOMMENDATION

None.

MEMORANDUM

To: Mayor and City Commissioners
From: Lee J. Slaughter, Assistant City Manager
Mohammed Al-Shatel, Deputy Public Works Director
Date: May 2, 2007
Re: METRO Act Request from NextG Networks

This item is a normal request to participating municipalities from telecommunication companies for permission to construct telecommunication facilities in the public right-of-way. The request is per the City Commission resolution approving compliance with the Metropolitan Extension Telecommunications Right-of-way Oversight Act.

NextG Networks seeks a Bilateral form of Right-of-Way Telecommunication Permit from the City in order to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and microcellular antennas, on, over, and under the public Right of Way within the City in connection with the provision of telecommunications services provided by NextG to its wireless operator customers.

NextG also requests the use of City owned streetlight poles for third party attachment. In response, NextG was advised that City streetlight poles are not available for their use.

Per the application process, requesting entities/businesses are supposed to submit necessary and required supporting documentation to municipalities to facilitate processing their request. Municipalities are required to process said request.

NextG Networks has partially provided necessary verification and / or documentation. Outstanding items are as follows:

- Provide Method/procedure by which the City might identify facilities.
- Pursue agreement with Consumers Energy for the use of its poles
- Enter into agreement with MIS-DIG for digging or locating their system
- At the appropriate time (prior to construction), become compliant with section 3.5 of NextG Networks' Application.

Consistent with past practice where these matters are concerned, we are requesting that the Commission grant a conditional approval to NextG's request pending receipt of outstanding supporting documentation.

Please feel free to contact me if you have questions.

METRO Act
Unilateral Form
Revised 12/06/02

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

This permit issued this 8 day of May, 2007 by City of Muskegon.

1 Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean City of Muskegon, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permittee shall mean NextG Networks organized under the laws of the State of Illinois whose addresses are NextG Networks of Illinois, Inc., c/o NextG Networks , Inc., 2216 O'Toole Avenue, San Jose, CA 95131 and NextG Networks, Inc., 5902 Mount Eagle Dr., Suite 1517, Alexandria, Virginia 22303.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.

1.9 Term shall have the meaning set forth in Part 7.

2 Grant

2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms set forth herein.

2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.

2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.

2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is included in the official, business contact list filed with the Municipality.

3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them will be the engineering contact included in the official, business contact list filed with the Municipality.

- 3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities are included in the official, business contact list filed with the Municipality.
- 3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is included in the official, business contact list filed with the Municipality.
- 3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency is included in the official, business contact list filed with the Municipality.
- 3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.
- 3.2 Route Maps. Within ninety (90) days after the substantial completion of new Facilities in the Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7). In accordance with Section 6(5) of the METRO Act, a provider's existing and proposed facilities that is a trade secret, proprietary or confidential information is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.
- 3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

- 4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions

as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.
- 4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public

Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

- 4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

- 4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be

amended.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.
- 4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.
- 4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors

shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities,

commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).

- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
 - 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
 - 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
 - 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any

premium on any insurance policy required to be furnished hereunder.

- 6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).
- 6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:
- 7.1.1 Five years from the Date of Issuance; or
 - 7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or
 - 7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
 - 7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
 - 7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time

construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

- 9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

- 10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

- 10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- 10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

- 11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:
- 11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.
 - 11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,
 - 11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and
 - 11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.
 - 11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.
- 12 Notices
- 12.1 Notices. All notices under this Permit shall be given as follows:
 - 12.1.1 If to Municipality: City of Muskegon, P.O. Box 536, Muskegon, MI 49443-0536.
 - 12.1.2 If to Permittee: NextG Networks of Illinois, Inc., c/o NextG Networks, Inc., 2216 O'Toole Avenue, San Jose CA 95131. Permittee's contact information has been filed with the Municipality.

- 12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other Items

- 13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).
- 13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.
- 13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].
- 13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

Attested:

CITY OF MUSKEGON

By [Signature]
Its: City Clerk
Date: 5-23-07

By: [Signature]
Its: Mayor
Date: 5-23-07

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

NEXTG NETWORKS OF ILLINOIS, INC.,
d/b/a NextG Networks Central

[Signature]
By: Raymond K. Ostby
Its: Chief Financial Officer/Secretary/Treasurer
Date: 5/15/2007

Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

CITY OF MUSKEGON, MICHIGAN

**APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS**

BY

**NEXTG NETWORKS OF ILLINOIS, INC.
dba NextG Networks Central
("APPLICANT")**

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3).

This application must be accompanied by a one-time application fee of \$500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCLA 484.3105(3).

1 GENERAL INFORMATION:

- 1.1 Date: 01 February 2007
- 1.2 Applicant's legal name: NextG Networks of Illinois, Inc.
Mailing Address: c/o NextG Networks, Inc.
2216 O'Toole Avenue
San Jose, CA 95131
Telephone Number: (408) 954-1580
Fax Number: (408) 383-5397
Corporate website: www.nextgnetworks.net

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Christopher Sinclair
Director of Network Real Estate
Mailing Address: NextG Networks, Inc.
5902 Mount Eagle Drive, Suite 1517
Alexandria, VA 22303
Telephone Number: (703) 960-4775
Fax Number: (703) 960-4605
E-mail Address: csinclair@nextgnetworks.net

1.3 Type of Entity: (Check one of the following)

- ☒ Corporation
☐ General Partnership
☐ Limited Partnership
☐ Limited Liability Company
☐ Individual
☐ Other, please describe: _____

1.4 Assumed name for doing business, if any: NextG Networks Central

1.5 Description of Entity:

1.5.1 Jurisdiction of incorporation/formation;
State of Delaware

1.5.2 Date of incorporation/formation;
04 October 2002

1.5.3 If a subsidiary, name of ultimate parent company;
NextG Networks, Inc.

1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).

Chairman and CEO: John B. Georges, PhD
CFO/Secretary/Treasurer: Raymond K. Ostby

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Consumer and Industry Services and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information.

Please refer to the enclosed following documents:

- a) "Foreign Corporation Information Update" for Year 2005 (with Year 2006 Update) for NextG Networks of Illinois, Inc., state ID number 652313, as filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services – Corporation Division. NextG Networks of Illinois, as is its parent, NextG Networks, Inc., is a privately held concern; and
- b) Certificate of good standing, dated 16 January 2007, as issued by the Michigan Department of Labor & Economic Growth.

1.7 Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe.

None.

1.8 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle (underlined): Yes No
If "yes," please describe the circumstances.

1.9 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.9.1 A felony; or

1.9.2 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

Circle (underlined): Yes No
If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

1.10 [If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain.

1.10.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

NextG Networks of Illinois, Inc., has registered with the Michigan Public Service Commission as a Competitive Access Provider within the category of Intrastate Telecommunications Service Providers, allowing Applicant to provide local exchange service. Therefore, no financial information has been provided.

2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

Please see enclosed copy of registration with the Michigan Public Service Commission, Communications Division, evidencing the authority of NextG Networks of Illinois, Inc., to operate as a Competitive Access Provider.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

NextG uses a fiber optic network and associated antennas and equipment to offer wireless operators innovative solutions to satisfy coverage and/or capacity objectives within their networks that do not require the construction of macro sites, such as large towers, monopoles, or rooftop installations. Critical areas can be covered by using optical fiber to connect a network of microcellular node sites, consisting of small antennas and optical repeaters, attached to existing infrastructure, namely streetlights and utility distribution poles, where available, located in the public way. Such distributive antenna system (DAS) networks generally are intended to supplement, rather than supplant, macro sites within carriers' existing networks in areas where such macro sites cannot adequately serve or when macro sites may be considered impractical.

Communities recognize the numerous advantages of NextG Networks and DAS technology. Since deployment is not premised on the construction of new towers or monopoles, often controversial issues within any jurisdiction, siting issues generally are resolved to the satisfaction of municipality and wireless operator alike. Visually unobtrusive without any emanating sound or light, the equipment is small, concealed, and easy to install and maintain. Finally, new broadband technologies are provided without any disruption, public investment, or environmental impact.

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).

Enclosed you will find a map illustrating the proposed fiber route, deployed aerially where possible and underground where required. This map should be considered preliminary, proprietary, and CONFIDENTIAL.

2.4 Please provide an anticipated or actual construction schedule.

Construction is anticipated to commence in or about 4Q2007.

2.5 Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

NextG Networks of Illinois, Inc., will own (and/or lease) fiber and conduit in the public way by which it will provide telecommunications services.

2.6 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

- a) NextG Networks of Illinois, Inc., will be responsible for maintenance of the facilities. Any municipal representative may contact our Network Operations Center at any time at (866) 44-NEXTG, or (866) 446-3984, concerning the installation, operation, and maintenance of the facilities.
- b) Applicant's facilities will be installed primarily on utility-owned infrastructure, namely streetlight poles and distribution poles, where available. Evidence of a completed agreement with SBC-Michigan is enclosed; similar agreements with Consumers Energy and Verizon are in process. Access to municipally owned streetlight poles, where available, would be arranged separately.

3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

Please provide the following or attach an appropriate exhibit.

3.1 Address of Applicant's nearest local office;

NextG Networks, Inc.
5902 Mount Eagle Drive, Suite 1517
Alexandria, Virginia 22303

3.2 Location of all records and engineering drawings, if not at local office;

NextG Networks, Inc.
2216 O'Toole Avenue
San Jose, California 95131

3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system;

Corporate:

Todd Schultz
Vice President, Operations
NextG Networks, Inc.
2216 O'Toole Avenue
San Jose, CA 95131
Telephone (408) 954-1580, x159
Email tschulz@nextgnetworks.net
Responsibilities: Corporate oversight of network design, construction,
implementation, and maintenance

Regional:

Michael Donelon
Director of Implementation, Northeast Region
NextG Networks, Inc.
20 Lambeth Lane
O'Fallon, MO 63366
Telephone (636) 379-3090
Email mdonelon@nextgnetworks.net
Responsibilities: Regional management of network design, construction,
implementation, and maintenance

3.4 Provide evidence of self-insurance or a certificate of insurance showing Applicant's insurance coverage, carrier and limits of liability for the following:

3.4.1 Worker's compensation;

3.4.2 Commercial general liability, including at least:

3.4.2.1 Combined overall limits;

3.4.2.2 Combined single limit for each occurrence of bodily injury;

3.4.2.3 Personal injury;

3.4.2.4 Property damage;

3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations;

3.4.2.6 Independent contractor liability;

3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);

3.4.2.8 Environmental contamination;

3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents.

Please see enclosed certificate of insurance.

3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

To be determined and provided prior to construction.

4 CERTIFICATION:

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

NAME OF ENTITY ("APPLICANT")

NEXTG NETWORKS OF ILLINOIS, INC.
dba NextG Networks Central

Date: 01 February 2007

By: RLA
Name: Raymond K. Ostby
Title: CFO/Secretary/Treasurer

NEXTG NETWORKS, INC.

Check

Date: 1/30/2007

Check

Num: 011887

011887

INVOICE NO.
CR 1/29

DATE
1/29/2007

DESCRIPTION
Vchr: VCH002585

PAID AMOUNT
\$500.00

DISCOUNT
\$0.00

APPLIED AMOUNT
\$500.00

INTERNAL NO. VENDOR

259 CITYOF55

City of Muskegon

TOTALS

\$500.00

AN ARTIFICIAL WATERMARK IS PRESENT ON THE REVERSE SIDE

NEXTG NETWORKS, INC.

OPERATING ACCOUNT

2216 O'TOOLE AVENUE
SAN JOSE, CA 95131
PHONE: 408-954-1580

COMERICA BANK
WESTERN REGION
www.comerica.com

90-3752 / 1211

011887

DATE

1/30/2007

CHECK NUMBER

011887

Five hundred and 00 / 100 Dollars Only *****

AMOUNT



\$500.00

PAY
TO THE
ORDER
OF

City of Muskegon
933 Terrace Street
Muskegon, MI 49440

REQUIRES TWO SIGNATURES OVER \$10,000.00

Handwritten signature

AUTHORIZED SIGNATURE

MP

MP

FACE OF DOCUMENT IS A COLORED BACKGROUND ON WHITE PAPER

011887 1211375221 1892866680

**MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES - CORPORATION DIVISION
FOREIGN CORPORATION INFORMATION UPDATE**

Year 2005

1. Corporate Name NEXTG NETWORKS OF ILLINOIS, INC.		Tran Info: 2 11010406-1 09/12/05 Chk#: 5786 Amt: \$25.00 ID: 652313 FILED SEP 22 2005 by Department Bureau of Commercial Services
2. IDENTIFICATION NUMBER 652313	3. Resident Agent THE CORPORATION COMPANY	
4a. Registered Office Address in Michigan - NO., STREET, CITY, ZIP (may not be a P.O. Box) 30600 TELEGRAPH ROAD, BINGHAM FARMS, MI 48025		
4b. Mailing Address of Registered Office in Michigan, if different than address in Item 4a (may be a P.O. Box) [SAME AS ABOVE]		
5. Describe the general nature and kind of business in which the corporation is engaged: CONSTRUCT/OPERATE COMMUNICATIONS NETWORKS		
6. Total authorized shares: 50,000	7. Single Business Tax Apportionment Percentage: Submit an amended application to report a change in authorized shares. For increases in shares attributable due to an increase in SBT%, you may complete the enclosed worksheet and remit any additional admission fees with this report in lieu of filing an amended application. Most recent Single Business Tax Apportionment Percentage _____ % for year ending _____	

B.		NAME	BUSINESS OR RESIDENCE ADDRESS
If different than President	President	JOHN GEORGES	2216 O'TOOLE AVE., SAN JOSE, CA 95131
	Secretary	RAY OSTBY	2216 O'TOOLE AVE., SAN JOSE, CA 95131
	Treasurer	RAY OSTBY	2216 O'TOOLE AVE., SAN JOSE, CA 95131
	Vice President	DAVID CUTRER	2216 O'TOOLE AVE., SAN JOSE, CA 95131
If different than Officers	Director	JOHN GEORGES	2216 O'TOOLE AVE., SAN JOSE, CA 95131
	Director		
	Director		
9. The filing fee is \$25.00. If submitted after September 30, total fee is \$75. (\$25 filing fee plus \$50 late penalty fee.) Filing fee increased to \$25 on Oct. 1, 2003 through Sept. 30, 2007. Please make your check or money order payable to State of Michigan. This report must be filed by May 15 of the year in which it is due. If submitted more than 4 1/2 months after original due date include \$50.00 late penalty fee. Return this signed report with fee to: Michigan Department of Labor & Economic Growth Bureau of Commercial Services - Corporation Division PO Box 30702 Lansing, MI 48909-8202 (517) 241-6470			
10. Signature of authorized officer or agent <i>[Signature]</i>		Title TREASURER	Date 8/17/05 Phone (Optional)

If more space is needed, additional pages may be included. Do not staple any items to the report. Do not staple any items to the report. Professional Service Corporations must include a BCS/CD 314-List of Shareholders

BCS/CD-2500FW (Rev. 05/06)
Authority: Section 911, Act 284, Public Acts of 1972
Completion: Mandatory
Penalty: Revocation of Corporation

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
FOREIGN CORPORATION INFORMATION UPDATE



2006

Identification Number 652313	Corporation name NEXTG NETWORKS OF ILLINOIS, INC.
Resident agent name and mailing address of the registered office THE CORPORATION COMPANY 30600 TELEGRAPH ROAD BINGHAM FARMS MI 48025	
The address of the registered office 30600 TELEGRAPH ROAD BINGHAM FARMS MI 48025	



To certify there are no changes from your previous filing check this box and proceed to Item 7. If the resident agent and/or registered office has changed complete Items 1-7. If no change in resident agent or registered office but other information has changed complete Items 4-7.

1. Mailing address of registered office in Michigan (may be a P.O. Box)		2. Resident Agent	
3. The address of the registered office in Michigan (a P.O. Box may not be designated as the address of the registered office)			
4. Describe the general nature and kind of business in which the corporation is engaged:			
5. NAME BUSINESS OR RESIDENCE ADDRESS			
President			
Secretary			
Treasurer			
Vice - President			
Director			
Director			
Director			
6. Single Business Tax Apportionment Percentage: Submit an amended application to report a change in authorized shares. For increases in shares attributable due to an increase in SBT%, you may complete the enclosed worksheet and remit any additional admission fees with this report in lieu of filing an amended application.			
Total authorized shares		50,000	Most recent _____ % for year ending _____
Previous attributable shares		60,000	Previous period _____ % for year ending _____
7. Signature of authorized officer or agent <i>[Signature]</i>		Title CEO	Date 9/17/06
			Phone (Optional) 408-954-1540 x154

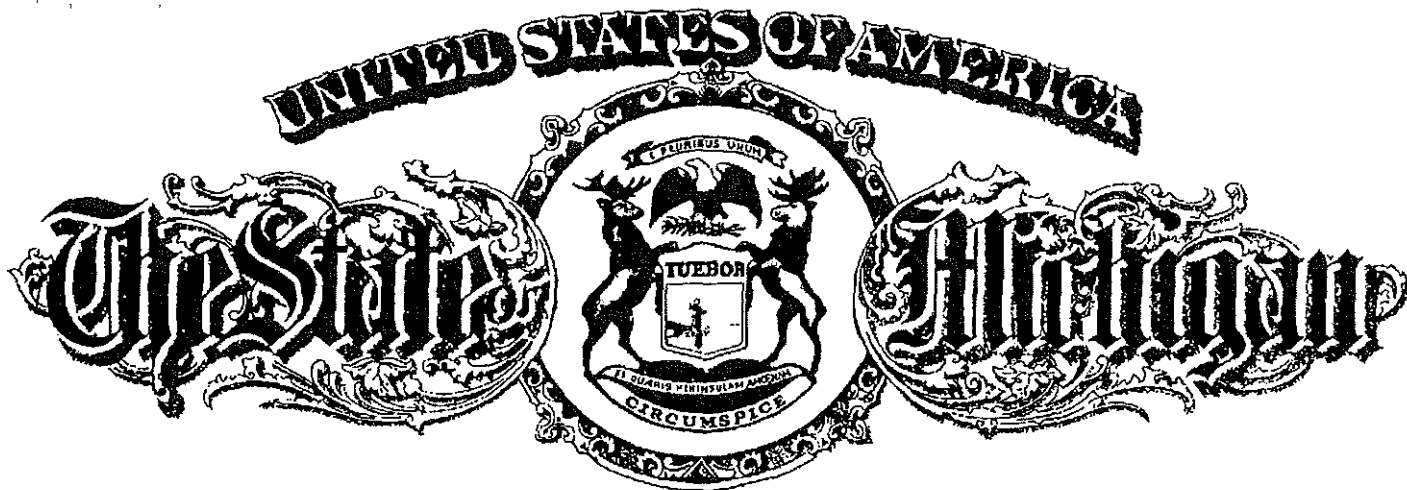
This report must be filed on or before May 15, 2006.

The filing fee is \$25.00.

If Agency receives after September 30, 2006, fee is \$75.
(\$25 filing fee, plus \$50 late penalty)

If more space is needed additional pages may be included. Do not staple any items to report. This report is required by Section 911, Act 284, Public Acts of 1972, as

Please make your check or money order payable to the State of Michigan.
Return to: Michigan Department of Labor & Economic Growth
Bureau of Commercial Services, Corporation Division
P.O. Box 30702
Lansing, MI 48909-8202
(517) 241-6470.



Michigan Department of Labor & Economic Growth

Lansing, Michigan

This is to Certify That

NEXTG NETWORKS OF ILLINOIS, INC.

a(n) DELAWARE profit corporation, was validly authorized on September 17, 2004, to transact business in Michigan, and that said corporation holds a valid certificate of authority to transact business in this state.

This certificate is issued pursuant to the provisions of 1972 PA 284, as amended, to attest to the fact that the corporation is in good standing in Michigan as of this date and is duly authorized to transact business in this state any business of the character set forth in its application which a domestic corporation formed under this act may lawfully conduct.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I have hereunto set my hand, in the City of Lansing, this 16th day of January, 2007.

Andrew L. Mitchell, Director

Bureau of Commercial Services

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NEXTG NETWORKS OF ILLINOIS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SIXTEENTH DAY OF SEPTEMBER, A.D. 2004.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3576829 8300

AUTHENTICATION: 3356285

040672236

DATE: 09-16-04

**MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES**

Date Received

SEP 17 2004

(FOR BUREAU USE ONLY)

FILED

This document is effective on the date filed, unless
a subsequent effective date within 90 days after
received date is stated in the document.

SEP 17 2004

Name

NextG Networks, Inc.

Address

1759 S. Main Street, Suite 128

City

Milpitas

State

CA

Zip Code

95035

Administrator

BUREAU OF COMMERCIAL SERVICES

EXPIRATION DATE:

DECEMBER 31, 2009

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

CERTIFICATE OF ASSUMED NAME**For use by Corporations, Limited Partnerships and Limited Liability Companies**

(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), Act 162, Public Acts of 1982 (nonprofit corporations), Act 213, Public Acts of 1982 (limited partnerships), or Act 23, Public Acts of 1993 (limited liability companies), the corporation, limited partnership, or limited liability company in item one executes the following Certificate:

1. The name of the corporation, limited partnership, or limited liability company is:

NextG Networks of Illinois, Inc.

2. The identification number assigned by the Bureau is:

652-313

3. The assumed name under which business is to be transacted is:

NextG Networks Central

4. This document is hereby signed as required by the Act.

COMPLETE ITEM 5 ON LAST PAGE IF THIS NAME IS ASSUMED BY MORE THAN ONE ENTITY.

Signed this 13th day of September, 2004

By

John B. Georges

(Type or Print Name)

President and CEO

(Type or Print Title or Capacity)

(Limited Partnerships Only - Indicate Name of General Partner if the General Partner is a corporation or other entity)

FE
\$12.50 1169515 CK/CR

General Info

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- > [Term Glossary](#)
- > [FAQ / Help](#)

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- > [30 Days](#)

Register

- > [New Registrants](#)
- > [Login](#)

Intrastate Telecommunications Service Providers (ITSP)**Company and Customer Contact Information****Registered Intrastate Telecommunication Services Providers**

These companies have registered with the Michigan Public Service Commission per Commission Order U-11900.

NextG Networks of Illinois, Inc.

2216 O'Toole Ave.
San Jose, CA 95131

Phone: 408-954-1580
Fax: 408-383-5397
Email:

Customer Contact: Anthony Rodriguez
2216 O'Toole Ave.
San Jose, CA 95131

Phone: 408-954-1580
Fax: 408-383-5397
Email:

This company is registered as:

- ☐ Broadbands Over Power Lines (BPL) Provider
- ☒ Competitive Access Provider (CAP)
- ☐ Competitive Local Exchange Carrier (CLEC)
- ☐ Incumbent Local Exchange Carrier (ILEC)
- ☐ Interexchange Carrier (IXC)
- ☐ Payphone Provider (PP)
- ☐ Toll Reseller (TR)
- ☐ Operator Service Provider (OSP)
- ☐ Voice over Internet Protocol (VoIP) Provider
- ☐ Wireless Provider

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E-mail comments and suggestions to: lstower@michigan.gov
Michigan Public Service Commission, Communications Division
Lansing, Michigan, USA

STAND-ALONE AGREEMENT FOR ACCESS
TO SBC COMMUNICATION INC.'S STRUCTURE
(POLES, CONDUITS, AND RIGHTS OF WAYS)

**AUTHORIZING SIGNATURES
TO SBC COMMUNICATION INC.'S STRUCTURE
(POLES, CONDUITS, AND RIGHTS OF WAYS)**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

NextG Networks of Illinois, Inc., D/B/A NextG Networks Central SBC Midwest D/B/A SBC Michigan

Signature: [Signature]
(Signature of Applicant's Authorized Officer/Employee)

Name: John Georges
(Print or Type)

Title: President and CEO
(Print or Type)

Date: 1/13/2005

Milpitas, CA
City and State of Execution by Applicant

Signature: [Signature]
(Signature of SBC Midwest Authorized Officer/Employee)

Name: JUDITH A. DAHLKE
(Print or Type)

Title: Structure Access Mgr.

Date: 1/18/05

Southfield, MI
City and State of Execution by SBC Midwest

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
01/30/2007PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

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

INSURERS AFFORDING COVERAGE

INSURED
NextG Networks, Inc. NextG Networks of Illinois, Inc.
dba NextG Networks Central
2216 O'Toole Avenue
San Jose, CA 95131

INSURER A: American International Specialty Lines

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	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 EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Pollution Liability (Michigan)	CP01467489	08/31/2006	08/31/2007	Limit \$ 1,000,000 Deductible \$ 5,000 \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Issued for Evidence of Insurance Purposes Only

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION 10 Day Notice for Non-Payment of Premium

City of Muskegon
933 Terrace Street
Muskegon, MI 49440SHOULD 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 *Jenna McCann*

LOAN #:

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YY)
05/01/2007

PRODUCER

Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

NextG Networks, Inc., NextG Networks of Illinois, Inc.
dba NextG Networks Central
2216 O'Toole Avenue
San Jose, CA 95131

INSURER A: Hartford Casualty Insurance Company

INSURER B: St. Paul Fire and Marine Insurance Company

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	57UUNTM8200	08/02/2006	08/02/2007	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ Included MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	57UUNTM8200	08/02/2006	08/02/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS LIABILITY ☒ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$	57RHUTM8005	08/02/2006	08/02/2007	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	HTUB6961C01706	08/01/2006	08/01/2007	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				\$ \$ \$

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

Insurance coverage is provided as required by the METRO Act Permit issued to NextG Networks of Illinois, Inc. by the City of Muskegon. The City of Muskegon is named as an additional insured per form HG 00 01 10 01 attached, as respects any covered liability arising out of NextG's performance of work under this METRO Act Permit issued by the City of Muskegon.

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION 10 Day Notice for Non-Payment of Premium

City of Muskegon
933 Terrace Street
Muskegon, MI 49440

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

AUTHORIZED REPRESENTATIVE

Jenna McCaman

LOAN #:

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- 2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services unless he or she is a nurse, emergency medical technician or paramedic employed to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by
you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

e. Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

- 3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
 - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
- 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- 5. With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. The following are also an insured when you have agreed, in writing, in a contract or agreement that another person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

- a. Any person or organization (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(1) The insurance afforded the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

- b. Any person or organization from whom you lease equipment; but only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this paragraph ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

- 1. To any "occurrence" which takes place after the equipment lease expires;
- 2. To "bodily injury" or "property damage" arising out of the sole negligence of such person or organization.

- c. Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to lease that land;
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

- d. Any architect, engineer, or surveyor, but only with respect to liability arising out of your premises or ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- 2. Supervisory, inspection, architectural or engineering activities.

- e. Any other person or organization who is not an insured under Paragraphs a. through d. above, but only with respect to your operations, "your work" or facilities owned or used by you.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim.
 - (1) To the extent possible, notice should include:
 - (a) How, when and where the "occurrence" or offense took place;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - (2) This Condition applies only when such "occurrence" or offense is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) A manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) Any trustee, if you are a trust.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

But this condition will not be considered breached unless the breach occurs after such claim or "suit" is known to anyone listed in 2.a.(2) above.

Commission Meeting Date: May 8, 2007

Date: May 7, 2007

To: Honorable Mayor & City Commission

**From: Community and Neighborhood Services
Department**

**RE: Approval of Resolution to submit Healthy Homes
Lead Grant**

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete grant to the U.S. Department of Housing and Urban Development for the Healthy Homes Lead abatement for a possible 3 million dollars.

FINANCIAL IMPACT: The City could receive up to 3 million dollars for lead abatement for homes in the City of Muskegon.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution

COMMITTEE RECOMMENDATION: The City Commission approved earlier this year for the Community and Economic Development department to work with an assigned consultant to prepare the grant.

Resolution

2007-39(d)

Whereas, The City of Muskegon is a Participating Jurisdiction in the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program (CDBG), and HOME programs.

Whereas, The City of Muskegon, has approximately 15, 999 Housing units, in the city.

Whereas, approximately 14, 000 or 87.5% of the units in the City of Muskegon, were built before 1979.

Whereas, the issue of Lead in housing is recognized as an important factor as it relates to children's health.

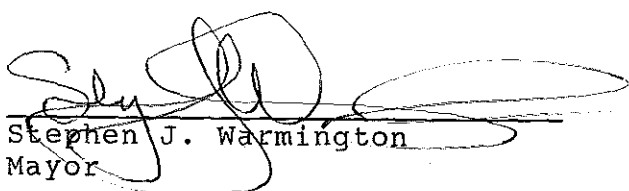
Whereas, the Muskegon S.A.F.E. Housing program is applying for a Healthy Homes Lead Safe Grant from the U.S. Department of Housing and Urban Development, in the amount of 3 million dollars.

Now, Therefore Be It Resolved that the Muskegon City Commission hereby approves the grant to be submitted by the Community and Neighborhood Service Office, under S.A.F.E. Housing Muskegon, on May 18, 2007.

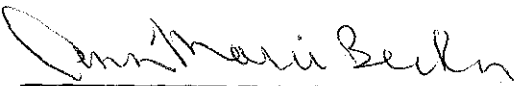
Adopted: May 8, 2007

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

Nays: None



Stephen J. Warmington
Mayor

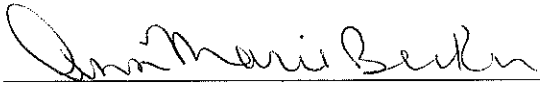


Ann Marie Becker, MMC
City Clerk

CERTIFICATION
2007-39(d)

This resolution was adopted at a regular meeting of the City Commission, held on May 8, 2007. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By: 
Ann Marie Becker, MMC
City Clerk