

CITY OF MUSKEGON

CITY COMMISSION MEETING

APRIL 24, 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. Rezoning Request for Property Located at 527 Young Street. PLANNING & ECONOMIC DEVELOPMENT
 - C. Donation of Bicycles - Muskegon County Health Department. PUBLIC SAFETY
 - D. Beach Leveling. PUBLIC WORKS
 - E. 2007 Water Treatment Chemical Bids. PUBLIC WORKS
 - F. Purchase of 2265 Lincoln. COMMUNITY & NEIGHBORHOOD SERVICES
 - G. Consideration of Bids for Knollwood Ct., Beach Street to End (H-1625). ENGINEERING
 - H. Multiple Special Event Liquor License Request. ASSISTANT CITY MANAGER
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
 - A. 2007-2008 Healthcare Renewal. FINANCE

- B. Resolution to Sell 1122 Spring. COMMUNITY & NEIGHBORHOOD SERVICES
- C. City - MDOT Agreement for the Reconstruction of Second, First, Jefferson and Market Streets. ENGINEERING
- D. City - MDOT Agreement for Federal Money Loan to Reconstruct Phase II of the Downtown Development. ENGINEERING
- E. City - MDOT Agreement for the Reconstruction of Creston Street, Laketon to Evanston. ENGINEERING
- F. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: PUBLIC SAFETY

1885 McIlwraith

1178 Chestnut (Area 13) REMOVED PER STAFF REQUEST

460 Houston (Area 10)

369 Isabella (Area 11)

❑ 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: April 24, 2007
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the April 9th Commission Worksession, and the April 10th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

APRIL 24, 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, April 24, 2007.

Mayor Warmington opened the meeting with a prayer from Reverend Michael Borgert from First Christian Reformed 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 Chris Carter, Kevin Davis, Clara Shepherd, Lawrence Spataro, and Sue Wierengo, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker

2007-34 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the April 9th Commission Worksession, and the April 10th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Rezoning Request for Property Located at 527 Young Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property located at 527 Young Street, from I-1, Light Industrial district to I-2, General Industrial district.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the request.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their April 12th meeting. The vote was unanimous,

with B. Smith absent.

C. Donation of Bicycles - Muskegon County Health Department. PUBLIC SAFETY

SUMMARY OF REQUEST: The Director of Public Safety is requesting Commission approval to donate four abandoned/recovered bicycles to the Muskegon County Health Department. This summer the Health Department will be piloting a community bicycle program within the City. The program will work as follows: A person pays a \$5 registration fee and is issued an identification card. When a bicycle is needed, the registrant is issued a bicycle and a lock. The registrant is responsible for returning the bicycle to the Health Department, where the bicycles will be stored.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the agreement.

D. Beach Leveling. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to enter into a three-year contract with JSN Excavating to perform the beach leveling contract for the years 2007, 2008, and 2009 at a cost of \$41,500, \$45,000, and \$47,500 respectively (total cost of the contract is \$134,000). JSN was the lowest responsible bidder.

FINANCIAL IMPACT: Cost \$41,500 in 2007, \$45,000 in 2008, and \$47,500 in 2009.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into a contract with JSN.

F. Purchase of 2265 Lincoln. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the purchase of 2265 Lincoln from the U. S. Department of Housing and Urban Development for \$1 through its "Good Neighbor" program. Under the Good Neighbor program guidelines, a municipality can purchase a house for \$1, if a property that is for sale by Housing and Urban Development is on the market for six months or more.

After 2265 Lincoln is obtained by the City, the Community & Neighborhood Services Department will contract to have the current two-unit structure converted back to a single-family unit.

FINANCIAL IMPACT: The dollar will come from Community and Neighborhood Services HOME program fund.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

G. Consideration of Bids for Knollwood Ct., Beach Street to End (H-1625). ENGINEERING

SUMMARY OF REQUEST: Award the contract for Knollwood Ct. from Beach Street to End to Felco Contractors, Inc. of Muskegon, MI since they were the lowest responsible bidder with a bid price of \$73,385.

FINANCIAL IMPACT: The construction cost of \$73,385 plus engineering cost which is estimated at an additional 15%.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Award the contract to Felco Contractors, Inc.

Motion by Commissioner Carter, second by Commissioner Davis to approve the Consent Agenda as read minus items E and H.

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

Nays: None

MOTION PASSES

2007-35 ITEMS REMOVED FROM THE CONSENT AGENDA:

E. 2007 Water Treatment Chemical Bids. PUBLIC WORKS

SUMMARY OF REQUEST: Recommend endorsement of lowest responsible bidders to supply aluminum sulfate, sodium hypochlorite, and fluoride for the Water Filtration Plant.

FINANCIAL IMPACT: Annual cost of \$116,943 (based on average annual water pumped to mains).

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

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

Motion by Commissioner Carter, second by Commissioner Spataro to approve the 2007 water treatment chemical bids.

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

Nays: None

MOTION PASSES

H. Multiple Special Event Liquor License Request. ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: Racquets Downtown Grill, located at 446 W. Western Avenue is requesting an extension of their liquor license to be able to host an

outside entertainment area during their scheduled Taste of Muskegon/Main Street Car Show event, scheduled for June 21st thru June 24th. The first license is held by Party in the Park for the June 22nd date only.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

COMMITTEE RECOMMENDATION: This event was approved by the Leisure Services Board at their April 16th meeting.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the multiple Special Event liquor license request from Racquets Downtown Grill.

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

Nays: None

MOTION PASSES

2007-36 NEW BUSINESS:

A. 2007-2008 Healthcare Renewal. FINANCE

SUMMARY OF REQUEST: It is time to renew the City's healthcare coverage for the 2007-08 plan year. Healthcare costs for the City, like all employers, continue to rise rapidly. Renewal rates for the City's current healthcare program came in at \$817.28/employee/month, about 10% higher than the current rate (\$744.43). In dollar terms, this translates into an annual cost increase of \$218,550. Staff believes certain adjustments must be made to bring the amount of cost increase down to a more manageable level given our budget uncertainties and the likelihood of state revenue sharing cuts. Accordingly, we are proposing a healthcare benefit renewal that includes the following adjustments:

1. Increase in office co-pay visits from the current \$10/visit to \$15/visit
2. Increase in the co-pay for emergency room care from \$25 to \$50
3. Increase in the co-pay for "urgent care" (e.g. Norton Medi Center) from \$10 to \$25
4. Increase in the co-pay for brand name prescriptions from \$25 to \$30 (generic Rx co-pays remain \$15)

FINANCIAL IMPACT: With these adjustments, the City's costs will increase 6.20% (\$130,320) – a still significant, but manageable level.

BUDGET ACTION REQUIRED: None. With the proposed adjustments, the healthcare cost increase will be within budget.

STAFF RECOMMENDATION: Approval of the healthcare renewal with Priority Health incorporating the benefit changes outlined above.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the 2007-2008 healthcare renewal with the adjustments.

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

Nays: None

MOTION PASSES

B. Resolution to Sell 1122 Spring. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the resolution to sell the City-owned house at 1122 Spring to Mr. William Holland of 596 Howell, Apt. B, Muskegon Heights, MI for the price of \$76,800 minus subsidy and some closing cost.

The City of Muskegon through the State tax reversion process obtained the house at 1122 Spring. The house was rehabilitated as a part of Operation R & R (Reawakening and Resurgence) also known as "Spring Street Reawakening".

The intent of Operation R & R is to rehabilitate 10 abandoned homes in the targeted area in one fiscal year. The house at 1122 Spring is the 8th home to be rehabilitated this year.

The Hollands will be purchasing the house at 1122 Spring as an owner-occupied structure. Operation R & R is continuing the City's aggressive neighborhood revitalization efforts.

FINANCIAL IMPACT: The revenues derived from the sale will be deposited in the City's HOME account.

BUDGET ACTION REQUIRED: To approve the sale.

STAFF RECOMMENDATION: To approve the resolution and instruct the Community & Neighborhood Services office to complete the sale.

COMMITTEE RECOMMENDATION: Operation R & R was approved by the Land Reutilization Committee. The City Commission approved Operation R & R and the Spring Street project.

Motion by Commissioner Shepherd, second by Commissioner Spataro to approve the resolution to sell 1122 Spring to Mr. William Holland.

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

Nays: None

MOTION PASSES

C. City – MDOT Agreement for the Reconstruction of Second, First, Jefferson and Market Streets. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of Second, First, Jefferson and Market Streets within the Downtown Development (former Mall Area) between Clay, Morris, Third and Terrace and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the Federal funds of \$1,111,900 and \$177,900 of State funds for a total grant of \$1,289,800.

BUDGET ACTION REQUIRED: None at this time.

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

Motion by Commissioner Carter, second by Commissioner Davis to approve the MDOT agreement for the reconstruction of Second, First, Jefferson and Market Streets.

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

Nays: None

MOTION PASSES

D. City - MDOT Agreement for Federal Money Loan to Reconstruct Phase II of the Downtown Development. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of Second, First Jefferson and Market Streets within the Downtown Development (former Mall Area) and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

As part of the "jobs today's program" the State made available to local governments the ability to advance construct projects on the 2007 and 2008 transportation plan by lending the federal allocation for those projects as long as the local governments agreed to two conditions;

1. The projects would be advertised and awarded a year ahead of their scheduled time.
2. The local governments would have to enter into the agreement with the State which outlines the terms and conditions of the loan.

The advantage on this project is that this whole agreement is merely a paper work matter since the City could not have spent any money against the federal funds to accrue any interest since the actual construction will take place in the 2008-2009 fiscal years.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will

come out of the Major Street and water, sewer funds as shown in the 2007 budget.

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

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the City-MDOT agreement for the Federal money loan to reconstruct Phase II of the Downtown Development.

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

Nays: None

MOTION PASSES

E. City - MDOT Agreement for the Reconstruction of Creston Street, Laketon to Evanston. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of Creston between Laketon and Evanston and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the Federal funds of \$219,559. The estimated total construction cost is \$313,000.

BUDGET ACTION REQUIRED: None at this time.

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

Motion by Vice Mayor Gawron, second by Commissioner Carter to approve the City-MDOT agreement for the reconstruction of Creston Street, Laketon to Evanston.

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

Nays: None

MOTION PASSES

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

1885 McIlwraith

1178 Chestnut (Area 13) REMOVED PER STAFF REQUEST

460 Houston (Area 10)

369 Isabella (Area 11)

SUMMARY OF REQUEST: This is to request that the City Commission concur with

the findings of the Housing Board of Appeals that these structures are unsafe, substandard, public nuisances and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: General.

BUDGET ACTION REQUIRED: None.

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

Motion by Commissioner Spataro, second by Commissioner Shepherd to concur with the Housing Board of Appeals notice and order to demolish 1885 McIlwraith, 460 Houston, and 369 Isabella.

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

Nays: None

MOTION PASSES

G. Easement for Underground Electric Line.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to approve the easement for an underground electric line for Fisherman's Landing with Consumers Energy Company.

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

Nays: None

MOTION PASSES

2007-37 ANY OTHER BUSINESS:

Commission commented on the Renaissance Place. This will be placed on the next Worksession.

Motion by Commissioner Davis, second by Commissioner Spataro to formally indicate to MISHDA the Commission's disapproval on their approval of this project based on the fact that the City Commission turned down the PILOT.

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

Nays: None

MOTION PASSES

Commissioner Carter thanked Leisure Services on their youth basketball

program.

PUBLIC PARTICIPATION: Various comments were heard from the public.

ADJOURNMENT: The City Commission Meeting adjourned at 6:35 p.m.

Respectfully submitted,

A handwritten signature in blue ink, reading "Ann Marie Becker". The signature is fluid and cursive, with the first name "Ann" and last name "Becker" being more prominent than the middle name "Marie".

Ann Marie Becker, MMC
City Clerk

Commission Meeting Date: April 24, 2006

Date: April 13, 2007
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *abc*
RE: Rezoning request for property located at 527 Young St.

SUMMARY OF REQUEST:

Request to rezone the property located at 527 Young Street, from I-1, Light Industrial district to I-2, General Industrial district.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the request.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 4/12 meeting. The vote was unanimous, with B. Smith absent.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2218

An ordinance to amend the zoning map of the City to provide for a zone change for certain properties from I-1 "Light Industrial" to I-2 "General Industrial".

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning of the following described property from I-1, "Light Industrial" to I-2 "General Industrial":

CITY OF MUSKEGON
COM AT SE COR OF NW FRL ¼ SEC 31 T10N R16W TH N 00D 00M 00S E 1295.50 FT ALG E LN OF SD NW FRL ¼ TH S 89D 46M 54S W 672.43 FT ALG S R/W LN OF YOUNG AVE & ITS EXTENSION IN YOUNG & WILLIAMS ADDN FOR POB TH S 00D 00M 00S E 320.00 FT ALG W R/W LN TEMPLE ST TH S 89D 46M 54S W 349.77 FT TH N 33D 14M 47S W 381.68 FT ALG THE NE R/W LN OF CSX RR TH N 89D 46M 54S E 559.02 FT ALG SD S R/W LN OF YOUNG AVE TO POB PROPOSED ESMT OVER RUDDIMAN CREEK DRAIN THAT PT OF FOL DESC ESMT LYING OVER AND ACROSS ABOVE PARCEL A 50 FT WIDE STRIP OF LAND C/L DESC AS COM AT THE W 1/4 COR OF SEC 31 T10N R16W TH S 89D 49M 59S E 1031.12 FT ALG S LN OF NW FRL 1/4 SD SEC 31 FOR POB OF SD C/L TH N 45D 25M 16S E 354.00 FT TH N 02D 08M 16S E 495.50 FT TH N 43D 12M 46S E 749.75 FT FOR POE OF SD C/L ON THE S R/W LN OF YOUNG AVE IN YOUNG & WILLIAMS ADDN THE SIDELINES OF SD 50 FT WIDE STRIP OF LAND EXTEND OR SHORTEN TO ALLOW NO GAPS OR OVERLAPS

This ordinance adopted:

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

Nays: None

Adoption Date: April 24, 2007

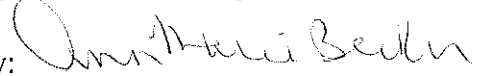
Effective Date: May 11, 2007

First Reading: April 24, 2007

Second Reading: N/A

CITY OF MUSKEGON

By:

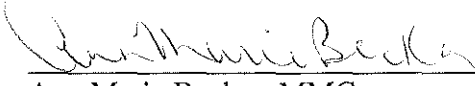


Ann Marie Becker, MMC
City Clerk

CERTIFICATE (Rezoning of 527 Young Street I-1 to I-2)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 24th day of April, 2007, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: 4-24, 2007.


Ann Marie Becker, MMC
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on April 24, 2007, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning of the following property from I-1, "Light Industrial" to I-2 "General Industrial":

CITY OF MUSKEGON

COM AT SE COR OF NW FRL ¼ SEC 31 T10N R16W TH N 00D 00M 00S E 1295.50 FT ALG E LN OF SD NW FRL ¼ TH S 89D 46M 54S W 672.43 FT ALG S R/W LN OF YOUNG AVE & ITS EXTENSION IN YOUNG & WILLIAMS ADDN FOR POB TH S 00D 00M 00S E 320.00 FT ALG W R/W LN TEMPLE ST TH S 89D 46M 54S W 349.77 FT TH N 33D 14M 47S W 381.68 FT ALG THE NE R/W LN OF CSX RR TH N 89D 46M 54S E 559.02 FT ALG SD S R/W LN OF YOUNG AVE TO POB PROPOSED ESMT OVER RUDDIMAN CREEK DRAIN THAT PT OF FOL DESC ESMT LYING OVER AND ACROSS ABOVE PARCEL A 50 FT WIDE STRIP OF LAND C/L DESC AS COM AT THE W 1/4 COR OF SEC 31 T10N R16W TH S 89D 49M 59S E 1031.12 FT ALG S LN OF NW FRL 1/4 SD SEC 31 FOR POB OF SD C/L TH N 45D 25M 16S E 354.00 FT TH N 02D 08M 16S E 495.50 FT TH N 43D 12M 46S E 749.75 FT FOR POE OF SD C/L ON THE S R/W LN OF YOUNG AVE IN YOUNG & WILLIAMS ADDN THE SIDELINES OF SD 50 FT WIDE STRIP OF LAND EXTEND OR SHORTEN TO ALLOW NO GAPS OR OVERLAPS

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

This ordinance amendment is effective ten days from the date of this publication.

Published May 1, 2007

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Staff Report [EXCERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

April 12, 2007

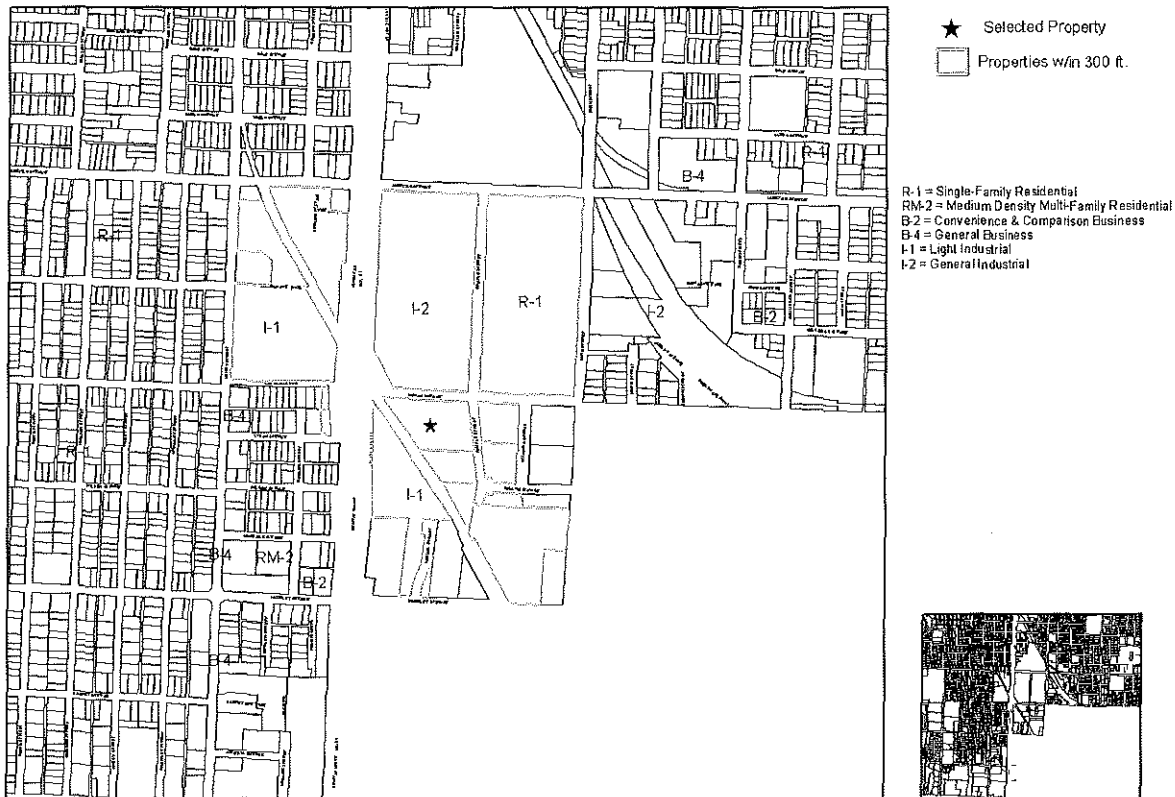
Hearing; Case 2007-09: Request to rezone the property at 527 Young Ave., parcel 24-131-100-0006-10, from I-1, Light Industrial District, to I-2, General Industrial, by Dan Posma, Dan Hoe Excavating.

<u>Applicant:</u>	Dan Posma, Dan Hoe Excavating
<u>Property Address/Location:</u>	527 Young Avenue
<u>Request:</u>	Request to rezone from I-1, Light Industrial, to I-2, General Industrial
<u>Present Land Use:</u>	Vacant parcel
<u>Zoning:</u>	I-1, General Industrial

STAFF OBSERVATIONS

1. A site plan was approved for a truck garage on the site at the March 15, 2007 Planning Commission meeting.
2. Although the City allowed the new owner to use this property last construction season for some concrete recycling in conjunction with a public works project, that use is not allowed in an I-1 zone. The applicant has since indicated that he wishes to continue to do concrete recycling, along with storage of aggregate on the site. Since Dan Hoe Excavating works on many road construction projects in the area, a site to store and recycling concrete from these projects is essential to their operation.
3. Properties to the south, east, and west are zoned I-1, Light Industrial. The property to the north is zoned I-2, General Industrial, and is the rear of the Brunswick property. A rezoning for this site would be a continuation of the existing I-2 zone.
4. The properties to the south, east, and west, as well as the subject property, are included in the Seaway Industrial Park. It was originally thought that all properties in the park should be zoned I-1, however, Staff feels that the location of the property is such that adjacent properties would be not be adversely affected by this zone change.
5. The City's 1997 Master Plan's Future Land Use Map indicates the subject property as "Industrial".
6. A Special Land Use Permit is also required for the use intended for this property, and is the subject of the next case.
7. Staff has received no comments on this request.





STAFF RECOMMENDATION

Staff recommends approval of the request to rezone the subject properties from I-1, Light Industrial, to I-2, General Industrial, because the request conforms to the goals and recommendation of the City's 1997 Master Plan.

DELIBERATION

Criteria-based questions typically asked during a rezoning include:

1. **What**, if any, identifiable **conditions** related to the petition **have changed which justify** the petitioned **change in zoning**.
2. **What** are the **precedents and the possible effects** of precedent that might result from the approval **or denial** of the petition?

3. What is the **impact** of the amendment on the ability of the city to provide **adequate public services and facilities and/or programs** that might reasonably be required in the future if the petition is approved?
4. Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property?
5. Does the petitioned zoning change generally **comply with the adopted Future Land Use Plan of the City**?
6. Are there any **significant negative environmental impacts** which would reasonably occur if the petitioned zoning change and resulting allowed structures were built such as:
 - a. **Surface water** drainage problems
 - b. **Waste water** disposal problems
 - c. Adverse effect on surface or subsurface **water quality**
 - d. The **loss of valuable natural resources** such as **forest, wetland, historic sites, or wildlife areas.**
7. Is the proposed zoning change a “**Spot Zone**”?
 - a. Is the parcel **small in size relative to its surroundings**?
 - b. Would the zoning change allow uses that are **inconsistent with those allowed in the vicinity**?
 - c. Would the zoning change confer a **benefit to the property owner** that is **not generally available to other properties** in the area?
 - d. A spot zone is **appropriate if it complies with the Master Plan.**

DETERMINATION

The following motion is offered for consideration:

I move that the request to rezone the property located at 527 Young Avenue from I-1, Light Industrial district to I-2, General Industrial district, as described in the public notice, be recommended for (**approval/denial**) to the City Commission pursuant to the City of Muskegon Zoning Ordinance, and the determination of (**compliance/lack of compliance**) with the intent of the City Master Land Use and zoning district intent.

City Commission Meeting
Tuesday April 24, 2007

TO: Honorable Mayor and City Commissioners

FROM: Anthony L. Kleibecker, Director of Public Safety

DATE: April 16, 2007

SUBJECT: Donation of Bicycles-Muskegon County Health Department

Summary of Request:

The Director of Public Safety is requesting commission approval to donate four (4) abandoned/recovered bicycles to the Muskegon County Health Department. This summer the health department will be piloting a community bicycle program within the city. The program will work as follows: A person pays a \$5.00 registration fee and is issued an identification card. When a bicycle is needed the registrant is issued a bicycle and a lock. The registrant is responsible for returning the bicycle to the health department, where the bicycles will be stored.

Financial Impact:

None

Budget Action Required:

None

Staff Recommendation:

Approval of the agreement.

Date: 4/24/07
To: Honorable Mayor and City Commission
From: DPW
RE: Beach Leveling

SUMMARY OF REQUEST:

Authorize staff to enter into a three years contract with JSN Excavating to perform the beach leveling contract for the years 2007, 2008 & 2009 at a cost of \$41,500.00, \$45,000.00, \$47,500.00 respectively (total cost of the contract is \$134,000.00). JSN was the lowest responsible bidder.

FINANCIAL IMPACT:

Cost \$41,500 in 2007, \$45,000 in 2008, and 47,500.00 in 2009

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into contract with JSN

Memorandum

To: Honorable Mayor and City Commissioners

From: DPW

Date: 4/24/07

Re: Beach Leveling

The Department of Public Works has again solicited bid for the snow fence removal and beach leveling. This work was previously done in house but due to the extreme wear and tear on our equipment and the high cost of renting equipment, we began outsourcing this activity in 2004.

Bid packets were distributed to contractors at a pre-bid meeting held at Pere Marquette Park. The bid is for a three year period. (Attached is a summary of bids.)

In accordance with established policy, we are requesting permission to award the 2007-2009 beach leveling contract to JSN Excavating.

2007 Beach Leveling				
	<u>Hitsman</u>	<u>JSN Excavating</u>	<u>McCormick Sand</u>	<u>Felco Contractors</u>
	<u>107 California</u>	<u>432 Farr Rd</u>	<u>955 S 102</u>	<u>856 Pulaski</u>
	<u>N. Muskegon</u>	<u>Muskegon</u>	<u>Shelby</u>	<u>Muskegon</u>
Beach leveling				
2007	\$45,000.00	\$41,500.00	\$56,280.00	\$51,000.00
2008	\$46,000.00	\$45,000.00	\$57,960.00	\$52,000.00
2009	\$47,000.00	\$47,500.00	\$59,700.00	\$52,000.00

Commission Meeting Date: April 24, 2007

Date: April 17, 2007

From: Community and Neighborhood Services Department

W.G.

RE: Purchase of 2265 Lincoln

SUMMARY OF REQUEST: To approve the purchase of 2265 Lincoln from the U. S. Department of Housing and Urban Development for \$1.00 through its " Good Neighbor" program. Under the Good Neighbor program guidelines a municipality can purchase a house for \$1.00, if a property that is for sale by HUD is on the market for six months or more.

After 2265 Lincoln is obtained by the City, the CNS Department will contract to have the current 2- unit structure converted back to a single-family unit.

FINANCIAL IMPACT: The dollar will come from Community and Neighborhood Services HOME program fund.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.



24-205-676-0006-20

2265 LINCOLN ST

07/00-STREET VIEW

Date: April 24, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Consideration of Bids
Knollwood Ct., Beach St. to End (H-1625)

SUMMARY OF REQUEST:

Award the contract for the in Knollwood Ct. from Beach St. to End to Felco Contractors, Inc. of Muskegon, MI since they were the lowest responsible bidder with a bid price of \$73,385.00.

FINANCIAL IMPACT:

The construction cost of \$73,385.00 plus engineering cost which is estimated at an additional 15%.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Award the contract to Felco Contractors, Inc.

COMMITTEE RECOMMENDATION:

BID TABULATION - 04/10/07

ITEM NO.	ITEM DESCRIPTION	CONTRACTOR ADDRESS	ENGINEERS			FELCO CONTRACTORS, INC.			JACKSON-HENKLEY COVINT, INC.			MCCORMICK SAND, INC.			BRENNER EXCAVATING			DOUBBLE L E ENTERPRISES, INC.			WABEY STEADLIZATION		
			ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL	ESTIMATE	UNIT PRICE	TOTAL
1	1.00 LAST DITCHER IN CASTING		1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00	1	UNIT	\$ 4,000.00
2	2.00 LAST DITCHER IN CASTING		2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00	2	UNIT	\$ 8,000.00
3	3.00 LAST DITCHER IN CASTING 22 @ 6" C.I.P.		3	SOQ	\$ 5,889.50	3	SOQ	\$ 17,668.50	3	SOQ	\$ 17,668.50	3	SOQ	\$ 17,668.50	3	SOQ	\$ 17,668.50	3	SOQ	\$ 17,668.50	3	SOQ	\$ 17,668.50
4	4.00 BIT LEVELING MAX 24 @ 18" DIA. X		4	TON	\$ 57,325.00	4	TON	\$ 229,300.00	4	TON	\$ 229,300.00	4	TON	\$ 229,300.00	4	TON	\$ 229,300.00	4	TON	\$ 229,300.00	4	TON	\$ 229,300.00
5	5.00 BIT TOP MAX 40 @ 18" DIA. X		5	TON	\$ 57,325.00	5	TON	\$ 286,625.00	5	TON	\$ 286,625.00	5	TON	\$ 286,625.00	5	TON	\$ 286,625.00	5	TON	\$ 286,625.00	5	TON	\$ 286,625.00
6	6.00 CATCH BASIN CASTING 6"X 6																						

Date: April 24, 2007
To: Honorable Mayor and City Commission
From: Water Filtration Plant
RE: 2007 Water Treatment Chemical Bids

SUMMARY OF REQUEST:

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

FINANCIAL IMPACT:

Annual cost of \$116943.00 (based on average annual water pumped to mains).

BUDGET ACTION REQUIRED:

None at this time. These chemicals are budgeted annually.

STAFF RECOMMENDATION:

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

MEMORANDUM

4/16/07

TO: M. AL-SHATEL – DEPUTY DPW
FROM: R. VENEKLASSEN
RE: CHEMICAL BIDS – WATER FILTRATION

BACKGROUND

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

HISTORICAL CHEMICAL COSTS

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

YEAR	ALUMINUM SULFATE	CHLORINE	FLUORIDE
1996	\$136.29	\$395.00	\$138.80
1997	\$125.00	\$332.00	\$129.00
1998	\$125.00	\$332.00	\$129.00
1999	\$125.00	\$107.67	\$141.50
2000	\$136.50	\$107.67	\$141.50
2001	\$136.50	\$107.20	\$145.00
2002	\$136.05	\$107.20	\$142.30
2003	\$136.50	\$107.20	\$142.30
2004	\$146.94	\$98.00	\$146.30
2005	\$149.52	\$145.60	\$156.30
2006	\$174.72	\$138.42	\$230.00

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

CHEMICAL	TONS
Aluminum Sulfate	210
Sodium Hypochlorite	300
Fluoride	70

CHEMICAL BIDDING FOR 2007

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

The chemical bids for the West Michigan Cooperative Purchase in 2007 are as follows:

Fluoride	\$347.00
Lucier Chemical Industries, Ltd. (LCI)	
Jacksonville Beach, FL	
Aluminum Sulfate	\$224.72
US Aluminate	
Baltimore, MD	
Sodium Hypochlorite	\$129.65
Rowell Chemical Corp.	
Lisle, IL	

Date: April 18, 2007
To: Honorable Mayor and City Commissioners
From: Lee Slaughter, Assistant City Manager
RE: Multiple Special Event Liquor License Request

SUMMARY OF REQUEST: Racquets Downtown Grill, located at 446 W. Western Ave. is requesting an extension of their liquor license to be able to host an outside entertainment area during their scheduled Taste of Muskegon/Main St. Car show event, scheduled for June 21st thru June 24th. The first license is held by Party in the Park for the June 22nd date only.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None. Commission action required.

COMMITTEE RECOMMENDATION: This event was approved by the Leisure Services Board at their April 16th meeting.

Taste of Muskegon/Main St. Car Show

web format

Event Information					
event date	6/21/2007 to 6/24/2007	length	4 days	app date	3/20/2007
location	Third & Fourth St.	start time	4:00 pm	crowd size	8000
description	Four day event featuring beverage tent, live music and Muskegon Main St. Car show.			work order	
comments	First time event				
Organization Information					
name	Racquets Downtown Grill	contact	Ron Madison	insurance	QBE Insurance Corp.
address	900 Third St. Muskegon, MI 49440	phone	Day:231-750-4610 Home:		
Event Details					
alcohol: yes id checked: by licensed security					
services required: Parks Dept					
streets walks: Highway dept.					
Approvals					
engineering - \$0.00		inspections - \$0.00		zoning ✕ \$0.00	
treasurer - \$0.00		fire ✕ \$0.00		clerk - \$0.00	
parks - \$0.00		dpw - \$0.00		traffic - \$0.00	
manager - \$0.00		police - \$0.00		leisure services board - \$0.00	
final approval - \$0.00					
estimated total cost \$0.00					

Date: April 24, 2007

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: 2007-08 Healthcare Renewal

SUMMARY OF REQUEST: It is time to renew the City's healthcare coverage for the 2007-08 plan year. Healthcare costs for the City, like all employers, continue to rise rapidly. Renewal rates for the City's current healthcare program came in at \$817.28/employee/month, about 10% higher than the current rate (\$744.43). In dollar terms, this translates into an annual cost increase of \$218,550. Staff believes certain adjustments must be made to bring the amount of cost increase down to a more manageable level given our budget uncertainties and the likelihood of state revenue sharing cuts. Accordingly, we are proposing a healthcare benefit renewal that includes the following adjustments:

1. Increase in office co-pay visits from the current \$10.00/visit to \$15.00/visit
2. Increase in the co-pay for emergency room care from \$25 to \$50
3. Increase in the co-pay for "urgent care" (e.g. Norton Medi Center) from \$10 to \$25
4. Increase in the co-pay for brand name prescriptions from \$25 to \$30 (generic Rx co-pays remain \$15)

FINANCIAL IMPACT: With these adjustments, the City's costs will increase 6.20% (\$130,320) - a still significant, but manageable level. Attached for your information a more detailed analysis of the healthcare proposal.

BUDGET ACTION REQUIRED: None. With the proposed adjustments, the healthcare cost increase will be within budget.

STAFF RECOMMENDATION: Approval of the healthcare renewal with Priority Health incorporating the benefit changes outlined above.

COMMITTEE RECOMMENDATION: None.

CITY OF MUSKEGON

RENEWAL 2007

Benefit Level		Current	Renewal	Proposed
Hospital Coverage		100%	100%	100%
Office Visit/Urgent Care Copay		\$10	\$10	\$15/\$25
Prescription Drug Copay w/CM		\$15/\$25	\$15/\$25	\$15/\$30
Durable Medical Equipment		80%	80%	80%
Prosthetic & Orthotics		80%	80%	80%
Emergency Room Copay		\$25	\$25	\$50
Ambulance Copay		\$50	\$50	\$50
Deductible		No	No	No

Vision Coverage		Exam & Supplies every 12 months		
Premium		\$ 744.43	\$ 817.28	\$ 787.87
Increase/Decrease			9.78%	5.83%
HMO 100% Base Rate	\$ 671.10		\$ 671.10	\$ 671.10
\$10 Office Visit Copay	\$ -		\$ -	\$ -
\$15 Office Visit Copay/\$25 Urgent Care	\$ (10.01)			\$ (10.01)
\$1,000/\$2,000 Deductible	\$ (75.00)			\$ -
\$15/\$25 w/CM-MO2x Prescription	\$ 126.34		\$ 126.34	
\$15/\$30 w/CM-MO2x Prescription	\$ 108.57			108.57
DME 20% Copay	\$ 2.55		\$ 2.55	\$ 2.55
DME 50% Copay	\$ -			
P & O 20% Copay	\$ 0.62		\$ 0.62	\$ 0.62
P & O 50% Copay	\$ -			
Vision - High Plan - 24 months	\$ 7.52			
Vision - High Plan - 12 months	\$ 15.04		\$ 15.04	\$ 15.04
Ambulance \$50 Copay	\$ -		\$ -	\$ -
Emergency Room \$50	\$ -			\$ -
Emergency Room \$25	\$ 1.63		\$ 1.63	
Emergency Room \$75	\$ (1.63)			
Total		\$ 744.43	\$ 817.28	\$ 787.87

Annual Cost Per Employee		\$ 8,933.16	\$ 9,807.36	\$ 9,454.44
Annual Employee Premium Co-Pay		\$ (520.00)	\$ (520.00)	\$ (520.00)
Net City Cost Per Employee		\$ 8,413.16	\$ 9,287.36	\$ 8,934.44
% Increase to City			10.39%	6.20%
Total City Cost (@ 250)		\$ 2,103,290	\$ 2,321,840	\$ 2,233,610
Additional City Cost		\$ -	\$ 218,550	\$ 130,320

Key Changes With Proposal:

1. Office Co-pay for Dr. office visits goes from \$10 to \$15
2. Co-pay for "urgent care" (e.g. Medi-Center) goes from \$10 to \$25
3. Co-pay for Emergency Room goes from \$25 to \$50 (still lower than typical)
4. Co-pay for "brand-name" Rx goes from \$25 to \$30

Commission Meeting Date: April 24, 2007

Date: April 16, 2007

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department

RE: Resolution to sale 1122 Spring

SUMMARY OF REQUEST: To approve the attached resolution to sale the city owned house at 1122 Spring to Mr. William Holland of 596 Howell Apt B Muskegon Heights, MI for the price of \$76,800 minus subsidy and some closing cost.

The City of Muskegon through the State tax reversion process obtained the house at 1122 Spring. The house was rehabilitated as a part of Operation R & R (Reawakening and Resurgence) also known as "Spring Street Reawakening"

The intent of Operation R & R is to rehabilitate 10 abandoned homes in the targeted area in one fiscal year. The house at 1122 Spring is the 8th home to be rehabilitated this year.

The Hollands will be purchasing the house at 1122 Spring as an owner- occupied structure. Operation R & R is continuing the City's aggressive neighborhood revitalization efforts.

FINANCIAL IMPACT: The revenues derived from the sale will be deposited in the City's HOME account.

BUDGET ACTION REQUIRED: To approve the sale.

COMMITTEE RECOMMENDATION: Operation R & R was approved by the Land Reutilization Committee. The City Commission approved Operation R & R and the Spring St. project.

STAFF RECOMMENDATION: To approve the resolution and instruct the CNS office to complete the sale.

2007-36(b)

MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE SALE OF
CITY-OWNED PROPERTY AT 1122 SPRING

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

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

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

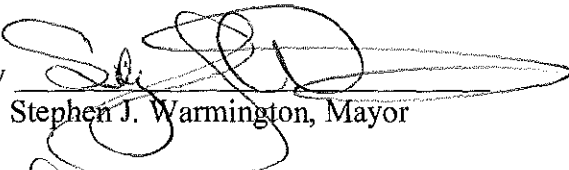
NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approved the sale of the totally rehabilitated home for \$76,800 which is located at 1122 Spring to be used as a single family owner-occupied home to William Holland with a subsidy of \$16,800 in its current rehabilitated condition.

Adopted this 24th day of April, 2007

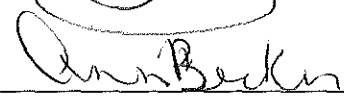
Ayes: Spataro, Warmington, Wierengo, Carter, Davis, Gawron,
and Shepherd

Nays: None

By


Stephen J. Warmington, Mayor

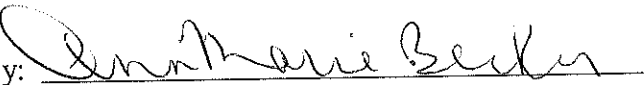
By


Ann Becker, MMC City Clerk

CERTIFICATION
2007-36(b)

This resolution was adopted at a regular meeting of the City Commission, held on April 24, 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



SPRING STREET
Pawabearing
PROJECT FUNDING BY
THE BERKELEY COMMUNITY FOUNDATION
PROJECT SPONSORED BY
CITY OF BERKELEY
COMMUNITY & NEIGHBORHOOD SERVICES
For More Information, Call (415) 724-6717

SPRING STREET
Pawabearing

Date: April 24, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
Second, First, Jefferson & Market Streets**

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Second, First, Jefferson & Market Streets within the Downtown Development (former Mall Area) between Clay-Morris-Third & Terrace and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the federal funds of \$1,111,900 & \$177,900 of state funds for a total grant of \$1,289,800.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION 2007-36(c)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF SECOND, FIRST, JEFFERSON & MARKET WITHIN THE DOWNTOWN DEVELOPMENT BETWEEN CLAY, MORRIS, THIRD & TERRACE ALONG WITH WATER, SIDEDWALK & SEWER WORK TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN BECKER TO EXECUTE SAID CONTRACT

Moved by Commissioner Carter and supported by

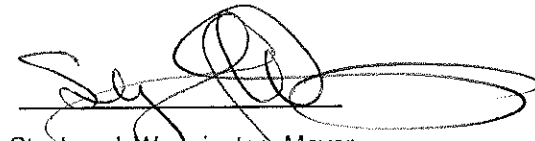
Commissioner Davis that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **07-5158** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of SECOND, FIRST, JEFFERSON & MARKET** within the City is in the best interests of the City of Muskegon.

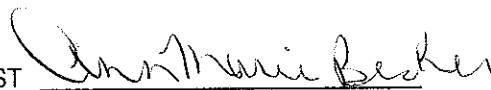
RESOLVED, that entry by the City into Contract Agreement Number **07-5158** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24 day of April, 2007.

BY


Stephen J. Warmington, Mayor

ATTEST

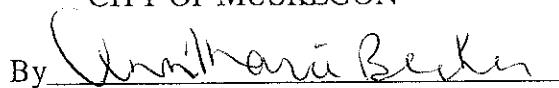


Ann Marie Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on April 24, 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, City Clerk



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 17, 2007

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

Dear Ms. Kunding:

RE: MDOT Contract Number: 07-5158
Control Section: HPSL 61407
Job Number: 90137

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

Sincerely,

Jackie Burch
Contract Processing Specialist
Design Support Area

Enclosure

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

Engineering

(ADVANCE CONSTRUCTION CONTRACT)
HPSL & LJT

CAB

Control Section	HPSL 61407
Job Number	90137
Project	HPSL 0761(012)
Federal Item No.	RR 5629
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	07-5158

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of MAY 16 2007, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated April 2, 2007, attached hereto and made a part hereof:

PART A – FEDERAL AND STATE PARTICIPATION

Hot mix asphalt paving work along First Street from Morris Avenue to Clay Avenue, along Second Street from Morris Avenue to Clay Avenue, and along Jefferson Street from Terrace Street to Clay Avenue; including storm sewer, grading, concrete curb and gutter, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL OR STATE PARTICIPATION

Watermain and sanitary sewer work within the limits as described in PART A; and all together with necessary related work.

WITNESSETH:

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

WHEREAS, the PROJECT has been approved for financing in part with State Local Jobs Today Program Funds; and

WHEREAS, the PROJECT will be performed partially as an advance construction project; and

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

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

HIGH PRIORITY PROJECTS PROGRAM - SAFETEA LU

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

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

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

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

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

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

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

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

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

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

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

4. The REQUESTING PARTY, under the terms of this contract, shall:

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

B. At PROJECT COST

(1) Perform or cause to be performed the street lighting work necessary for the completion of the PART A portion of the PROJECT.

(2) Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PART A portion of the PROJECT.

C. At no cost to the PROJECT

(1) Design or cause to be designed the plans for the PROJECT.

(2) Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PART B portion of the PROJECT.

The REQUESTING PARTY shall submit biweekly pay estimates and construction contract modifications to the DEPARTMENT in a timely manner.

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

The method of performing the work will be indicated on the work authorization. The REQUESTING PARTY will comply with PART II, Section IIF, when applicable.

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

PART A

The PART A portion of the PROJECT COST shall be met in part by contributions from the Federal High Priority Project Program – SAFETEA LU and the State Local Jobs Today Program.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Subtitle G - High Priority Projects, authorizes Federal High Priority Project funding and establishes the maximum amount of funding for the PART A portion of the PROJECT and associated phases under SAFETEA-LU Number 320, including work performed under job number 87289, to be \$2,320,000. It is understood that this amount is subject to obligational authority limitation and after applying that estimated limitation only \$2,018,400 may be available for the PART A portion of the PROJECT and associated phases. It is further understood that according to SAFETEA-LU, funds for the PART A portion of the PROJECT and associated phases are to be allocated over a period of 5 years.

Federal High Priority Project – SAFETEA LU Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 80 percent. There are no current available Federal High Priority Project – SAFETEA LU Funds for the PART A portion of this PROJECT. State Local Jobs Today Grant Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed \$264,600. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds and State Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

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

The State Local Jobs Today Program loan, through a separate contract, is an amount equivalent to the estimated Federal High Priority Project-SAFETEA LU Funding applicable to the PART A portion of the PROJECT that is not currently available. Said loan shall be used as advance construction dollars. Contingent upon availability of Federal Funds and Federal approval, Federal High Priority

Project – SAFETEA LU Funds, for future fiscal years, will be applied to any outstanding principal balance of the State Local Jobs Today Program loan for costs incurred on the PART A portion of this PROJECT as advance construction.

PART B

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

Any items of PROJECT COST or advance construction expenditure not reimbursed by Federal Funds or State Funds shall be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required from the REQUESTING PARTY for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 10 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less available Federal Funds, State Local Jobs Today Loan Funds, and State Local Jobs Today Grant Funds as the PROJECT progresses.

Failure to make such payments within 10 days of receipt of billings from the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold without further notice an equal amount from the REQUESTING PARTY'S share of any future Act 51 monthly allocations.

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

7. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway throughout the limits of the PROJECT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

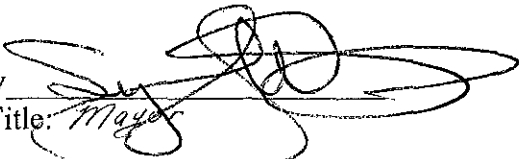
17. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current standard specifications for construction, and to:

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

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

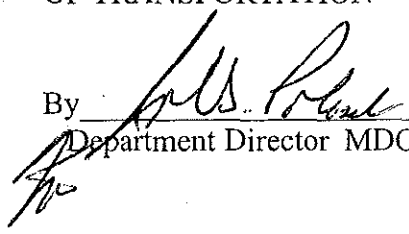
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF MUSKEGON

By 
Title: Mayor

By Ann Marie Beck
Title: City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By 
Department Director MDOT

4/5/07




April 2, 2007

EXHIBIT I

CONTROL SECTION	HPSL 61407
JOB NUMBER	90137
PROJECT	HPSL 0761(012)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$ 866,900	\$177,900	\$1,044,800

FORCE ACCOUNT WORK (REQUESTING PARTY)

Street Lighting Work	\$ 115,000	\$ 0	\$ 115,000
Construction Engineering, Construction Materials Testing, and Inspection	\$ 130,000	\$ 0	\$ 130,000
TOTAL ESTIMATED COST (FORCE ACCOUNT, ETC.)	\$ 245,000	\$ 0	\$ 245,000

GRAND TOTAL	\$1,111,900	\$177,900	\$1,289,800
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COST PARTICIPATION

Grand Total Estimated Cost	\$1,111,900	\$177,900	\$1,289,800
Less Federal High Priority Project – SAFETEA LU Funds (Current fiscal year)	\$ 0	\$ 0	\$ 0
Less State Local Jobs Today Grant Funds*	\$ 222,400	\$ 0	\$ 222,400
Balance	\$ 889,500	\$177,900	\$1,067,400

Less State Local Jobs Today Program Loan/Federal High Priority Project – SAFETEA LU Funds (Advance construction) Future fiscal year**	\$ 889,500	\$ 0	\$ 889,500
REQUESTING PARTY'S SHARE (Future fiscal year)	\$ 0	\$177,900	\$ 177,900

*State Local Jobs Today Grant Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed \$264,600.

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

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments--Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
 - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
 - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

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

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

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

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

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

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

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

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

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

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

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

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

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

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

c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

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

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

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

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

APPENDIX B

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

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

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

Date: April 24, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
RE: City – MDOT Agreement for:
Federal money loan to reconstruct
Phase II of the Downtown Development

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Second, First, Jefferson & Market Streets within the Downtown Development (Former Mall Area) and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

As part of the "jobs today's program" the state made available to local governments the ability to advance construct projects on the 2007 & 2008 transportation plan by lending the federal allocation for those projects as long as the local governments agreed to two conditions;

- 1- The projects would be advertised and awarded a year ahead of their scheduled time.
- 2- The local governments would have to enter into the attached agreement with the state which outlines the terms and conditions of the loan.

The advantage on this project is that this whole agreement is merely a paper work matter since the city could not have spent any money against the federal funds to accrue any interest since the actual construction will take place in the 2008/2009 fiscal years.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water, sewer funds as shown in the 2007 budget.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION 2007-36(d)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF SECOND, FIRST, JEFFERSON & MARKET WITHIN THE DOWNTOWN DEVELOPMENT BETWEEN CLAY, MORRIS, THIRD & TERRACE ALONG WITH WATER, SIDEDWALK & SEWER WORK TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN BECKER TO EXECUTE SAID CONTRACT

Moved by Commissioner Spataro and supported by

Vice Mayor Gawron that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **07-7158** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of SECOND, FIRST, JEFFERSON & MARKET** within the City is in the best interests of the City of Muskegon.

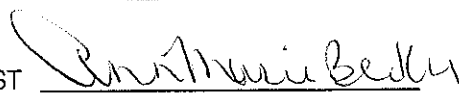
RESOLVED, that entry by the City into Contract Agreement Number **07-7158** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24 day of April, 2007.

BY


Stephen J. Warmington, Mayor

ATTEST

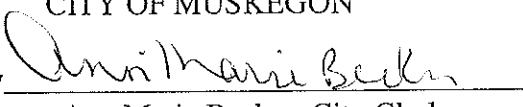

Ann Marie Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on April 24, 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, City Clerk



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 17, 2007

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

Dear Ms. Kunding:

RE: MDOT Contract Number: 07-7158
Control Section: HPSL 61407
Job Number: 90137

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

Sincerely,

Jackie Burch
Contract Processing Specialist
Design Support Area

Enclosure

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

Engineering

CAB
Control Section: HPSL 61407
Job No.: 90137
Project: HPSL 0761(012)
Federal Item No.: RR 5629
CFDA No.: 20.205 (Highway
Research Planning
& Construction)
Contract No.: 07-7158

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF MUSKEGON

LOCAL JOBS TODAY PROGRAM

LOAN CONTRACT

THIS LOAN CONTRACT, hereinafter referred to as the "CONTRACT," is made and entered into this date of **MAY 16 2007** by and between the Michigan Department of Transportation, of 425 West Ottawa Street, P.O. Box 30050, Lansing, MI 48909, hereinafter referred to as the "DEPARTMENT," and the CITY OF MUSKEGON, MICHIGAN, of 933 Terrace Street, P.O. Box 536, Muskegon, MI 49443-0536, hereinafter referred to as the "RECIPIENT."

WITNESSETH:

WHEREAS, Act 51, Public Acts of 1951, as amended, authorizes the DEPARTMENT to enter into contracts with boards of county road commissioners, incorporated cities, and villages for the loaning of funds for the purpose of constructing transportation infrastructure improvements, as described in the second paragraph of Article IX, Section 9, of the Michigan Constitution of 1963, as amended;

NOW, THEREFORE, the parties agree to the following:

Section 1. PURPOSE

The purpose of this CONTRACT is to assist the RECIPIENT in financing transportation infrastructure improvements, as described in the second paragraph of Article IX, Section 9, of the Michigan Constitution of 1963, as amended, through the project described below, hereinafter referred to as the "PROJECT." Such assistance will be provided by the DEPARTMENT in the form of a loan. Funds will be used for pre-approved purposes only. The DEPARTMENT has the discretion and the authority to recall, freeze, or limit disbursement of any funds or a portion thereof if the purpose or manner of expenditure by

the RECIPIENT is inconsistent with this CONTRACT and/or with federal or state laws, regulations, rules, or policies.

Hot mix asphalt paving work along First Street from Morris Avenue to Clay Avenue, along Second Street from Morris Avenue to Clay Avenue, and along Jefferson Street from Terrace Street to Clay Avenue; including storm sewer, grading, concrete curb and gutter, and pavement marking work; and all together with necessary related work.

Section 2. CONTRACT TERM

This CONTRACT will be in effect from the date of award through September 30, 2009.

Section 3. PROJECT FUNDING, BILLINGS, AND PAYMENTS

The DEPARTMENT will loan the RECIPIENT \$1,058,400. The RECIPIENT will pay interest at the rate of 4 percent annually. The loan funds will be used only for the PROJECT. The DEPARTMENT will retain the loan funds and make payments to PROJECT contractors and subcontractors on the RECIPIENT's behalf. The RECIPIENT directs the DEPARTMENT to convert federal advanced construction funds as soon as they become available. The assessment of interest will begin when the DEPARTMENT expends loan funds on the RECIPIENT's behalf. It is understood that the loan funds provided under this CONTRACT will not be sufficient to pay all PROJECT costs.

The loan under this CONTRACT is subject to the RECIPIENT's repayment in the following manner: federal aid reimbursement applicable to the PROJECT will be used to pay principal on the loan, and the DEPARTMENT will invoice the RECIPIENT annually for the actual amount of interest. The invoiced amounts will be due and payable within thirty days. Final payment of all principal and interest on the loan must be made on or before September 30, 2009.

If the RECIPIENT fails to make any of its required payments when they are due, the DEPARTMENT will immediately notify the RECIPIENT of such default and of the amount thereof, and if such default is not corrected by payment within ten (10) days, the DEPARTMENT is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the RECIPIENT from the Michigan Transportation Fund, but only after sufficient money has been returned to the county road commission, city, or village to provide for the payment of contractual obligations incurred or to be incurred and principal and interest on notes or bonds issued or to be issued under 1941 PA 205, 1943 PA 143, 1952 PA 175, or Section 18c or 18d of 1951 PA 51, sufficient monies to remove the default and to credit the RECIPIENT with payment thereof and to notify the RECIPIENT in writing of such fact.

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

Section 4. ADMINISTRATION

The DEPARTMENT will administer all phases of the PROJECT on behalf of the RECIPIENT, including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT, in accordance with the Local Agency Cost Participation Contract, as described in Section 9.

Any change in the scope or character of the PROJECT or in the cost, term, or other provision of the CONTRACT will be by a prior written amendment to this CONTRACT awarded by the parties.

In case of any discrepancies between the body of this CONTRACT and any exhibits hereto, the body of the CONTRACT will govern. The headings used in this CONTRACT are for convenience and identification purposes only and do not form a binding part of this CONTRACT.

Section 5. COMPLIANCE ACTIVITIES

The RECIPIENT will, in the performance of this CONTRACT, comply with and require its contractors and subcontractors to comply with all applicable federal, state, and local statutes, ordinances, and regulations and will obtain or have its contractors and subcontractors obtain all permits that are applicable to the entry into and performance of this CONTRACT.

The RECIPIENT will secure any agreements or approvals from railroad companies, utility companies, governmental agencies, or private parties required for construction of the PROJECT.

This CONTRACT will be interpreted, construed, and enforced in accordance with the laws of the State of Michigan.

By signing this CONTRACT, the RECIPIENT certifies that it has obtained or will obtain all necessary environmental protection permits and clearances prior to the beginning of the construction of the PROJECT.

Section 6. BREACH AND TERMINATION

In the event that any of the following occur, the DEPARTMENT may consider the RECIPIENT to be in default with respect to this CONTRACT:

- a. The RECIPIENT misrepresents any documentation or information provided to the DEPARTMENT to secure loan financing.
- b. The RECIPIENT fails to make a payment of any installment of interest under this CONTRACT or fails to make a due payment of any other debt or obligation now or later owed by RECIPIENT to the DEPARTMENT.
- c. The RECIPIENT defaults in the performance of any other obligation to the DEPARTMENT under this CONTRACT.

- d. The RECIPIENT becomes insolvent or makes an assignment for the benefit of creditors.
- e. Any guarantee or pledge made by the RECIPIENT that now or later secures payment for any or all indebtedness arising from this CONTRACT becomes terminated or limited for any reason (except as otherwise set forth herein or in 1951 PA 51) without the prior written consent or agreement of the DEPARTMENT.
- f. At any time the DEPARTMENT, acting in good faith, has cause to believe that the prospect of payment or performance under this CONTRACT is impaired.

In the event that the RECIPIENT fails to comply with the provisions of this CONTRACT, including the default provisions herein, and such noncompliance by the RECIPIENT continues for a period of ten (10) days after written notification of such noncompliance without an effort by the RECIPIENT to begin to diligently pursue remedies for such noncompliance, the DEPARTMENT will have the right, at its option and notwithstanding any waiver by the DEPARTMENT or any prior noncompliance, to demand the immediate return of the full outstanding balance of the loan financing and to terminate this CONTRACT.

The exercise of such right by the DEPARTMENT will not impair any other rights of the DEPARTMENT under this CONTRACT or any rights of action against the RECIPIENT for the collection of remaining monies due the DEPARTMENT and/or the recovery of damages.

Section 7. CONTRACTUAL OBLIGATIONS

Both parties will make reasonable efforts to satisfy promptly their surviving obligations to each other necessary to complete their contractual relationships after expiration or termination of this CONTRACT. This provision is not intended to nor does it create or confer any rights upon any person or entity not a party to this CONTRACT.

Section 8. PERFORMANCE RESPONSIBILITY

Each party to this Contract will remain responsible for any claims arising out of that party's performance of this Contract, as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

Section 9. LOCAL AGENCY COST PARTICIPATION CONTRACT

The DEPARTMENT and the RECIPIENT agree that, with respect to the PROJECT, the RECIPIENT will enter into a Local Agency Cost Participation Contract consisting of Part I and Part II (Standard Agreement Provisions) with the DEPARTMENT prior to the disbursement of loan funds.

Section 10. NOTICES

All notices required hereunder will be in writing and will be deemed to have been duly given if personally delivered or sent by certified mail, return receipt requested, postage paid, or by telegram addressed as shown below, or by confirmed facsimile machine message, unless notified differently in writing by the other party.

If to the DEPARTMENT:

Michigan Department of Transportation
Financial Operations Division
425 West Ottawa Street
P.O. Box 30050
Lansing, MI 48909

If to the RECIPIENT:

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

Section 11. SEVERABILITY

If any term, covenant, condition, or provision (or any part thereof) of this CONTRACT or the application thereof to any party or circumstance will at any time or to any extent be held to be invalid or unenforceable, the remainder of this CONTRACT or the application of such term or provision (or remainder thereof) to parties or circumstances other than those to which it is held to be invalid or unenforceable will not be affected thereby, and each term, covenant, condition, and provision of this CONTRACT will be valid and will be enforced to the fullest extent permitted by law.

Section 12. ASSIGNMENT

This CONTRACT may not be assigned without the express prior written approval of the non-assigning party, which approval will not be unreasonably withheld.

Section 13. ACCESS AND AUDIT

- a. The RECIPIENT will establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this CONTRACT, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this CONTRACT.
- b. The RECIPIENT will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this CONTRACT. In the event of a dispute with regard to the allowable expenses or any other issue

under this CONTRACT, the RECIPIENT will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

- c. The RECIPIENT will allow the DEPARTMENT or its representative to inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. The RECIPIENT will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 U.S.C. 7501-7507).
- e. The RECIPIENT will comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.
 - i. Recipients expending a total of Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds from one or more funding sources in their fiscal year will submit two (2) copies to the address in part ii below:
 - The Reporting Package
 - The Data Collection Form
 - The audit firm management letter to the recipient, if issued.

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

- ii. Recipients expending less than Five Hundred Thousand Dollars (\$500,000.00) in federal funds must submit a letter to the DEPARTMENT advising that an OMB Circular A-133 audit was not required. The letter will indicate the applicable fiscal year, the amount of federal funds spent, and the name(s) of the DEPARTMENT federal programs. This information must also be submitted to the address below.

Address: Michigan Department of Transportation
Financial Operations Division
425 West Ottawa Street
P. O. Box 30050
Lansing, MI 48909

- iii. Recipients must also comply with applicable state laws and regulations relative to audit requirements.
- iv. Recipients will not charge audit costs to the DEPARTMENT's federal programs that are not in accordance with the aforementioned OMB Circular A-133 requirements.

- v. All recipients are subject to the federally-required monitoring activities, which may include limited scope reviews and other on-site monitoring.
- f. If any part of the work is subcontracted, the RECIPIENT will assure compliance with subsections (a), (b), (c), (d), and (e) above for all subcontracted work.

Section 14. PROHIBITION OF DISCRIMINATION

- a. In connection with the performance of the PROJECT under this CONTRACT, the RECIPIENT (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this CONTRACT.
- b. During the performance of this CONTRACT, the RECIPIENT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts related to this CONTRACT.

Section 15. ASSIGNMENT OF ANTITRUST RIGHTS

With regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT, the RECIPIENT hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The RECIPIENT shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The RECIPIENT shall notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT may have occurred or is threatened to occur. The RECIPIENT shall also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services

that were used to meet the RECIPIENT's obligation to the DEPARTMENT under this CONTRACT.

Section 16. AWARD CONTINGENCY

Award of this CONTRACT will be contingent upon the RECIPIENT providing the DEPARTMENT with a duly adopted resolution authorizing a representative of the RECIPIENT to award this CONTRACT and undertake the PROJECT.

Section 17. FEDERAL TAX CODE

The RECIPIENT is a political subdivision of the State of Michigan that qualifies as a "government unit" within the meaning of Sections 141(b)(6)(A) and 141(c)(1) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the "CODE."

The RECIPIENT hereby covenants and agrees for the benefit of the DEPARTMENT that it will comply with the applicable requirements of Section 149 of the CODE.

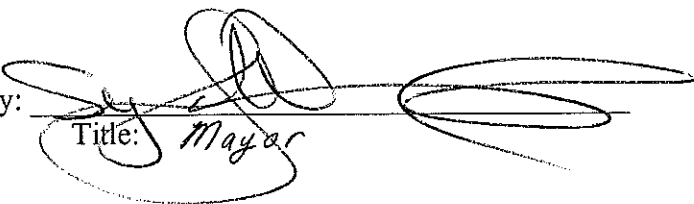
The RECIPIENT will not permit at any time or times any of the property financed with the proceeds of the loan funds that would result in the exclusion of any bonds of the DEPARTMENT from the treatment afforded by Section 103(a) of the CODE, as from time to time amended, by reason of the classification of such bonds as "private activity bonds" within the meaning of Section 141(a) of the CODE, or as obligations guaranteed by the United States of America, as provided in Section 149(b) of the CODE, or cause interest on the bonds to be includable in gross income for federal income tax purposes.

Section 18. AWARD

This CONTRACT will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the RECIPIENT and the DEPARTMENT and upon adoption of a resolution approving said CONTRACT and approving the signature(s) thereto of the respective representative(s) of the RECIPIENT, a certified copy of which resolution will be sent to the DEPARTMENT with this CONTRACT, as applicable.

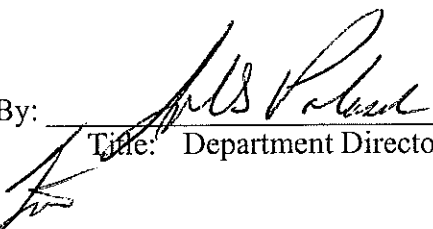
IN WITNESS WHEREOF, the parties have caused this CONTRACT to be awarded.

CITY OF MUSKEGON

By: 
Title: Mayor

MICHIGAN DEPARTMENT OF TRANSPORTATION

4/5/07


By: 
Title: Department Director



APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

APPENDIX B

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

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

Date: April 24, 2007
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
Creston Street, Laketon to Evanston**

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Creston between Laketon & Evanston and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the federal funds of \$219,559. The estimated total construction cost is \$313,000.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION 2007-36(e)

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

Moved by Vice Mayor Gawron and supported by

Commissioner Carter that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **07-5131** between the Michigan Department of Transportation and the City of Muskegon for the reconstruction of Creston between Laketon & Evanston within the City is in the best interests of the City of Muskegon.

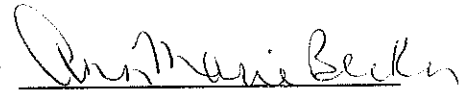
RESOLVED, that entry by the City into Contract Agreement Number **07-5131** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 24 day of April, 2007.

BY


Stephen J. Warmington, Mayor

ATTEST

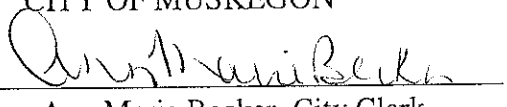

Ann Marie Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on April 24, 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, City Clerk



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 17, 2007

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

Dear Ms. Kunding:

RE: MDOT Contract Number: 07-5131
Control Section: STUL 61407
Job Number: 84358

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

Sincerely,

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

Jackie Burch
Contract Processing Specialist
Design Support Area

Enclosure

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

STP

DAB

Control Section	STUL 61407
Job Number	84358
Project	STP 0761(011)
Federal Item No.	HH 4997
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	07-5131

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of MAY 16 2007, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated March 29, 2007, attached hereto and made a part hereof:

Reconstruction work along Creston Street from Laketon Avenue to Evanston Avenue; including pavement removal, storm sewer, drainage structures, hot mix asphalt paving, and pavement marking work; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

5. The PROJECT COST shall be met in part by contributions by the Federal Government. Under the terms of this contract, Federal Surface Transportation Funds shall be applied to the eligible items of the PROJECT COST at the established Federal participation ratio equal to 81.85 percent up to an amount not to exceed \$219,559. The balance of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

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

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

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

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

7. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway throughout the limits of the PROJECT.

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

9. The REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a

minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

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

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

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

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

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist

the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

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

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

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

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

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

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

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

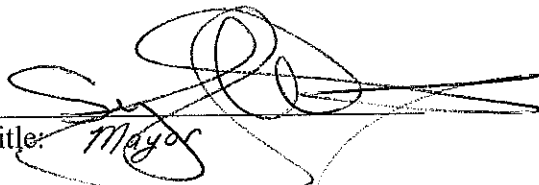
- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

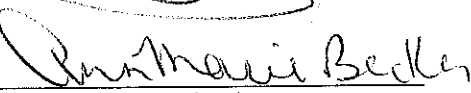
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction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

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

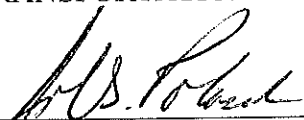
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF MUSKEGON

By 
Title: Mayor

By 
Title: City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By 
Department Director MDOT

4/5/07




March 29, 2007

EXHIBIT I

CONTROL SECTION	STUL 61407
JOB NUMBER	84358
PROJECT	STP 0761(011)

ESTIMATED COST

CONTRACTED WORK

Estimated Cost	\$271,900
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COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$271,900
Less Federal Funds*	<u>\$219,559</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ 52,341

*Federal Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 81.85 percent up to an amount not to exceed \$219,559.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments--Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
 - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
 - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

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

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

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

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

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

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

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

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

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

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

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

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

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

- a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

- b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

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

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

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

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

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

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

APPENDIX B

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

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

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

DATE: April 13, 2007
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-070007

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at 1885 McIlwraith – is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-070007 – 1885 McIlwraith

Location and ownership: This structure is located on McIlwraith between E. Laketon and Holbrook St and is owned by Federal Home Loan Mortgage, 8250 Jones Branch Dr. Mailstop A61, McLean, VA 22102

Staff Correspondence: A dangerous building inspection was conducted on 01/10/07. The Notice and Order to Repair was issued on 01/11/07. The HBA on 03/01/07 declared the structure dangerous, substandard and a public nuisance.

Owner Contact: Troy Haltom representing Century 21 Lumbertown and Fannie Mae arrived at the HBA meeting late after the structure had been declared dangerous, substandard and a public nuisance. A phone call was received from Mr. Haltom 04/12/07 stating the mortgage company had decided not to rehabilitate the home.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$4,800

Estimated cost to repair: \$60,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

INSPECTION SUMMARY

1885 McIlwraith

This is a single family wood frame structure. This building experienced a fire in December 2005 that caused extensive damage to basement and first floor framing system. There have been no attempts to make repairs to this building.

DB 1885 Neilson St



7/14/2006



7/14/2006



7/14/2006



7/14/2006

Potter, Linda

From: Kincaid, Mark
Sent: Friday, April 20, 2007 8:59 AM
To: Potter, Linda
Cc: LaBrenz, Don; Smith, Carmen
Subject: 1178 Chestnut

Good Morning Linda,

I have had contact with the mortgage holder for 1178 Chestnut. He has requested that we give him some time to effect repairs. Evidently he has just learned of the houses' condition and wants to do something about it. Could we do like last month and put in a staff recommendation to remove it from the agenda?

Thanks,
Mark

4/20/2007

DATE: April 13, 2007
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-060464

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1178 Chestnut Area –13** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-070007 – 1178 Chestnut

Location and ownership: This structure is located on McLaughlin between Chestnut and Scott St and is owned by Mark James, 2538 Jameswood Ct., Holland, MI 49424.

Staff Correspondence: A dangerous building inspection was conducted on 12/08/06. The Notice and Order to Repair was issued on 12/19/06. The HBA on 02/01/07 declared the structure dangerous, substandard and a public nuisance.

Owner Contact: No one was present to represent case for the HBA meeting dated 02/01/07. No permits have been issued, no inspections scheduled and no owner contact.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$12,900

Estimated cost to repair: \$10,000 (Exterior Only)

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Monday, December 11, 2006

Enforcement # EN060464
Parcel #24-205-081-0005-10

Property Address 1178 CHESTNUT ST
Owner JAMES MARK

Inspector: Henry Faltinowski

Date completed: 12/08/2006

DEFICENCIES:

Uncorrected

1. Repair/replace siding on both home and garage.
2. Repair/replace to code roof covering on home and garage - soffit -fascia.
3. Replace broken out doors and windows on home and garage.
4. Replace landings at back exterior to code MRC 2003.
5. Repair damaged foundation walls.
6. Interior requested.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date

INSPECTION SUMMARY

1178 Chestnut

This is a single story wood frame single family dwelling. This building has numerous broken windows. The exterior of dwelling is exposed to weather because of missing and damaged siding, the interior walls appear to be damaged from vandalism. Currently the roof system appears to be allowing inclement weather to enter the structure this building is in a general state of disrepair.



1178 Chestnut



DATE: April 13, 2007
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-060420

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **460 Houston - Area 10** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-060420 – 460 Houston

Location and ownership: This structure is located on Houston between 6th and 7th Streets and is owned by Katherine Earnest on land contract.

Staff Correspondence: A dangerous building inspection was conducted on 10/06/06. The Notice and Order to Repair was issued on 10/12/06. The HBA on 12/07/06 declared the structure dangerous, substandard and a public nuisance.

Owner Contact: No one was present to represent case at the HBA meeting dated 12/07/06. No permits have been issued, no inspections scheduled and no owner contact.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$18,200

Estimated cost to repair: \$30,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Monday, October 9, 2006

Enforcement # EN060420 **Property Address** 460 HOUSTON AVE
Parcel #24-205-347-0008-10 **Owner** EARNEST KATHERINE

Inspector: Henry Faltinowski

Date completed: 10/06/2006

DEFICENCIES:

Uncorrected

1. House to be rewired to 2003 MRC.
 2. Service to be replaced to 2003 MRC.
 3. Smoke alarms to be installed to 2003 MRC.
- Electricity was called in for a disconnect on 10/6/06.
4. Replace all floor joists beams to MRC 2003 Code.
 5. Cracked floor joists replace.
 6. Joist sections on flat plates danger of collapse.
 7. Construction without permits. (Drywall, framing).
 8. Replace - sister - cracked rafters.
 9. Roof covering not installed to code shingled over shakes - no new sheathing.
 10. Back door has 4 inch gap at bottom improper landing.
 11. Configure water service/distribution piped properly.
 12. Need T & P drain line at water heater.
 13. Must have union disconnect at furnace.
 14. Inspect & Certify furnace.
 15. Support water distribution to code.
 16. Support drain lines insure they are installed to code.
 17. Inspect & certify chimney.
 18. Shower faucet to be scald free design.
 19. Clean ductwork - Insure they are installed properly.
 20. Wash machine to be trapped.
 21. Insure supply air and return air provided to all habital spaces.
 22. Inspect & certify fireplace (wood).
 23. Vent drainage system to code.

- 24. Hose spigots to have vacuum breakers.
- 25. Pressure test gas lines.
- 26. Insure furnace is appropriate for this house.
- 27. All plumbing & mechanical to conform with 2003 Michigan Plumbing & Mechanical Codes.

Not included in this report is 26 items by Housing Inspector dated 10/10/06.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date

INSPECTION SUMMARY

460 Houston

This is a wood frame single family dwelling. Some repairs appear to have commenced, however many of those repairs have been done incorrectly and no permits have been applied for or issued. This building is currently abandoned and was boarded up by the Inspections Department in December 2006.

10/5/2006 460 Houston.



DATE: April 13, 2007
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-060390

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **369 Isabella Area –11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-060390 – 369 Isabella

Location and ownership: This structure is located on Isabella between Ambrosia and Sophia Streets and is owned by REO Acceptance Corp Ltd, P.O. Box 1711, West Palm Beach, FL 33402.

Staff Correspondence: A dangerous building inspection was conducted on 09/01/06. The Notice and Order to Repair was issued on 09/14/06. The HBA on 11/02/06 tabled case until December 2006. An interior inspection was conducted 11/07/06. The case came back before the HBA 12/07/06 and was declared dangerous, substandard and a public nuisance.

Owner Contact: Realtor, Barb Delello, was present to represent case with a potential buyer and stated that an offer had been accepted. No one was present to represent case at the HBA meeting dated 12/07/06

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$18,200

Estimated cost to repair: \$30,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

City of Muskegon
933 Terrace St., P.O. Box 536, Muskegon, MI 49443
(231) 724-6715

Tuesday, November 14, 2006

DANGEROUS BUILDING INTERIOR INSPECTION REPORT

Property Address: 369 E ISABELLA AVE **Parcel #** 24-205-249-0010-00

Owner: DLJ MORTGAGE CAPITAL INC

Inspection Type: DB Interior Inspection **Inspector:** Henry Faltinowski

Date completed: 11/07/2006

DEFICIENCIES:

Uncorrected - Exterior

1. Yard broken down fence- large amounts of debris left in yard.
2. Home partially boarded.
3. Garage missing siding - exposed to weather.
4. Rotting fascia on home.
5. Interior inspection required by trade inspectors.
6. Rotting windowsills.
7. Roof covering and drip edge need repair-replace.
8. Back shed - collapsed.

Uncorrected Interior

1. Re-frame all walls interior to code. Headers and proper jacks needed at opening.
- 2., Header porch windows on beams.
3. Beam needed for garage rafters sagging.
4. Re-support stairs - in basement with proper columns, trimmers & header.
5. Re-support main beam & columns (Beam basement)
6. Re-support rafters to code.
7. Rebuild back porch to code.
8. Electric service to be replaced to current code.
9. Smoke alarms to be installed to current code.
10. House to be rewired to current code.
11. Abate presumed asbestos.
12. Hose spigots 1- needs a handle, 1 -need vacuum breaker.
13. Provide bathroom facility.
14. Inspect & insure water & drainage work.
15. Perform gas pressure test - hookup.
16. Gas for water heater, furnace disconnect (gas).
17. Be outside furnace - inspect & certify.
18. Water heater & furnace - provide filter rack for return air for furnace.

- 19. Inspect chimney.**
- 20. Cap off unused drain lines.**
- 21. Insure supply air and return air to habitable spaces.**
- 22. All - work to conform with 2003 Michigan plumbing & Mechanical to code.**

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

HENRY FALTINOWSKI BUILDING INSPECTOR

DATE

INSPECTION SUMMARY

369 Isabella

This is a single family wood frame structure. This building is currently vacant and uninhabitable. Some repairs and renovations appear to have been started without permits or inspections. However none of this work was done correctly. The list of violations is lengthy and extensive. The Inspection Department has received numerous neighborhood complaints.

369 FSAISKELL +.
9/8/2006



9/8/2006



9/8/2006



9/8/2006



9/8/2006

EASEMENT FOR UNDERGROUND ELECTRIC LINE

Form 468 9-2006

Tax Code: 616029 W.O.#: 06668965

Parties: "Owner" is City of Muskegon

Owner's address is 933 Terrace St., Muskegon, MI 49443

"Consumers" is CONSUMERS ENERGY COMPANY, a Michigan corporation. Consumers' address is One Energy Plaza, Jackson, Michigan 49201.

Grant of Easement: For good and valuable consideration, Owner grants Consumers a permanent easement for underground electric line in, on, under, and across a portion of "Owner's Land," called the "Easement Area." Owner's Land is in the City of Muskegon, County of Muskegon, and State of Michigan and is described in the attached Exhibit A. The Easement Area is within Owner's Land and is described in the attached Exhibit B.

Purpose: The purpose of the easement is to grant Consumers the right to enter Owner's Land to construct, operate, inspect, maintain, replace, improve, remove, and enlarge an underground electric line in the Easement Area. The underground electric lines may consist of underground cables (including fiber-optic cable), conduits, wires, conductors, subsurface junction vaults, surface-mounted transformers and enclosures, and other equipment for transmitting and distributing electrical energy and communications signals.

Trees and Other Vegetation: Consumers shall have the right from time to time hereafter to enter Owner's Land to trim, cut down, and otherwise remove and control any trees, brush, roots, and other vegetation, whether inside or outside the Easement Area, that Consumers believes may interfere with the construction, operation, and maintenance of the underground electric line or lateral lines.

Buildings/Structures: Owner shall not: 1) locate any buildings, structures, septic systems, drain fields, ponds, or swimming pools within the Easement Area, 2) plant any trees within the Easement Area, or 3) change the ground elevation within the Easement Area. If Owner violates this provision, Owner shall reimburse Consumers for any expenses Consumers incurs correcting the violation. If Consumers corrects the violation by relocating the electric line or lateral line on Owner's Land, this easement shall automatically apply to such relocated line.

Exercise of Easement: Consumers' nonuse or limited use of this Easement shall not preclude Consumers' later use of this Easement to its full extent.

Successors: This easement shall bind and benefit Owner's and Consumers' respective heirs, successors, lessees, licensees, and assigns.

Date: 4-24-07

Owner: City of Muskegon

Bryan Mazade

Bryan Mazade, City Manager

Bryan

BPM 4-24-07

Acknowledgment

The foregoing instrument was acknowledged before me in Muskegon County, Michigan,

on April 24, 2007 by Bryan Mazade, City Manager of the City of Muskegon, on April 24, 2007
Date Bryan

Behalf of the city.

Ann Marie Becker

Notary Public

Muskegon County, Michigan

Acting in Muskegon County

My Commission expires: 4-24-07

This easement is exempt from real estate transfer tax pursuant to MCLA 207.505(f) and from State real estate transfer tax pursuant to the provisions of MCLA 207.526(f).

Prepared By: Michael L. Friend
Consumers Energy Company
Muskegon Service Center
231-728-8613

After recording, return to:
Robert M Bacon, EP7-451
Business Services
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

EXHIBIT A

Owner's Land

A PARCEL OF LAND LOCATED IN SECTION 19, T10N, R16W, DESCRIBED AS:

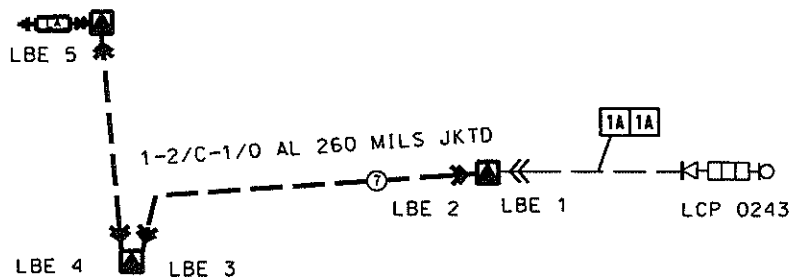
COMMENCING AT INTERSECTION OF NORTH LINE OF BLOCK 551 AND WESTLINE OF E. WESTERN AVENUE;
THENCE N 65° 55' W 200 FEET;
THENCE N 78° 45' W 50 FEET;
THENCE N 11° 15' E 600 FEET;
THENCE N 78° 45' W TO CENTER OF MUSKEGON LAKE TO A POINT HERE AFTER REFERRED TO AS POINT "A";
THENCE RECOMMENCE AT POINT OF BEGINNING;
THENCE SOUTHERLY ALONG WEST LINE OF E. WESTERN AVENUE 140 FEET;
THENCE N 80° 30' W 123.06 FEET;
THENCE N 76° 00' W TO CENTER OF MUSKEGON LAKE;
THENCE NORTHERLY ALONG CENTER OF LAKE TO POINT "A", BEING ENTIRE BLOCK 551;
THENCE NORTHERLY 90 FEET OF BLOCK 552 AND PART OF BLOCKS 547, 548, AND 549.

EXHIBIT B

Easement Area

A 10 foot-wide strip of land, being 5 feet on each side of the centerline of the underground electric line constructed on Owner's Land, the centerline to be located approximately as shown in the attached drawing.

FISHERMANS LANDING



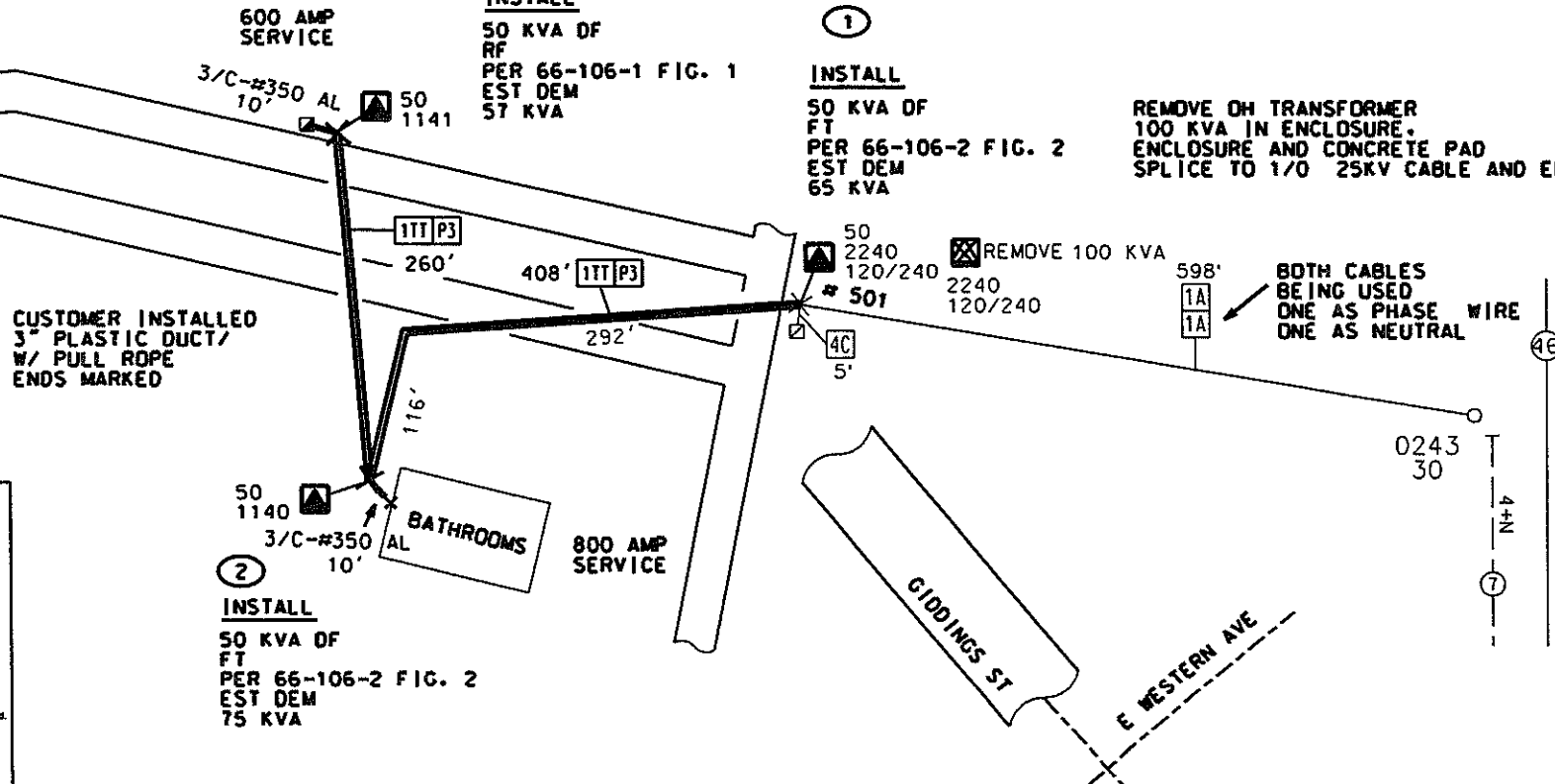
MUSKEGON CO
MUSKEGON TWP
T10 R16 SEC.19



3
INSTALL
50 KVA OF
RF
PER 66-106-1 FIG. 1
EST DEM
57 KVA

①
INSTALL
50 KVA OF
FT
PER 66-106-2 FIG. 2
EST DEM
65 KVA

REMOVE OH TRANSFORMER
100 KVA IN ENCLOSURE.
ENCLOSURE AND CONCRETE PAD
SPlice TO 1/0 25KV CABLE AND ELBOW



15KV, or secondary.
mils. 15KV, or secondary.
mils. 15KV, or secondary.
175 mils. 15KV, or secondary.
mils. 15KV, or secondary.
mils. 200 mils. 20KV.
mils. 200 mils. 20KV.
1 mils. 20KV.
7 mils. 20KV.
ing. Nil for Male 1, etc.
200 mils. 20KV.
the 280 mils. 20KV, jacketed
4, 260 mils tree-reinforced MS, jacketed.
mils. 20KV, jacketed.
mils tree-reinforced MS, jacketed.
280 mils. 20KV, jacketed.
mils tree-reinforced MS, jacketed.

**72 HOURS
13 MORNING DAYS
BEFORE YOU
CALL 1-888-
800-42-7111**