CITY OF MUSKEGON

CITY COMMISSION MEETING

APRIL 14, 2015

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
  - A. **2014 Outstanding Citizenship Awards.**
- **INTRODUCTIONS/PRESENTATION:**
  - A. **Presentation by Lake Hawks.**
- **CITY MANAGER'S REPORT:**
- **CONSENT AGENDA:**
  - A. **Approval of Minutes.** CITY CLERK
  - B. **National Bike to Work Week Resolution.** CITY CLERK
  - C. **Request to Fly the Norwegian Flag.** CITY CLERK
  - D. **PA 422 of 2014 – Cemetery Perpetual Care Fund.** FINANCE
  - E. **Rix Stix Pronto Pups and Rix Stix Eats Concession Contract for City of Muskegon Parks.** DEPARTMENT OF PUBLIC WORKS
  - F. **2015/16 Water Treatment Sodium Hypochlorite Bids.** DEPARTMENT OF PUBLIC WORKS
  - G. **Permanent Traffic Control Order – Install a permanent "STOP" sign at Indiana Avenue and Harbor Towne Circle per Traffic Control Work Order #17-(2015).** DEPARTMENT OF PUBLIC WORKS
  - H. **2015 Pavement Marking Program.** DEPARTMENT OF PUBLIC WORKS
  - I. **Aggregates, Highway Maintenance Materials and Concrete.** DEPARTMENT OF PUBLIC WORKS
  - J. **Police SUVs.** DEPARTMENT OF PUBLIC WORKS/EQUIPMENT

K. **<u>DPW Fleet Replacement Vehicles.</u>** DEPARTMENT OF PUBLIC WORKS/ EQUIPMENT

- □ **PUBLIC HEARINGS:**
- □ **COMMUNICATIONS:**
- □ **UNFINISHED BUSINESS:**
- □ **NEW BUSINESS:**

A. **<u>Approval of Sale of City-owned home at 1581 Division.</u>** COMMUNITY & NEIGHBORHOOD SERVICES

B. **<u>Request to Approve Revel to Design a New City Logo & Increase Public Relations Fund.</u>** CITY CLERK

C. **<u>City – MDOT Agreement; Henry Street Construction; Sherman to Hackley.</u>** ENGINEERING

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

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

- □ **CLOSED SESSION:**
- □ **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 CUMMINGS, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: April 9, 2015

We have a number of items on the agenda, and I thought you could use a little background on some of them as you prepare for our meeting next week.

1. Under Honors and Awards, we will present the 2014 Outstanding Citizenship Awards. We're lucky to have many people working to make our community a great place to live, work, and visit. This is a great way to acknowledge and honor some of the efforts by our community members.
2. Representatives from the West Michigan Lake Hawks will be in attendance to present the Commission with a token of appreciation for their support of the Lake Hawks' 2014-15 season.
3. Under the consent agenda, we are asking the Commission to approve:
    a. Last meeting's minutes.
    b. A Resolution acknowledging National Bike to Work Week – this is approved annually by the Muskegon City Commission.
    c. A request by The Sons of Norway to fly the Norwegian Flag. This request is considered annually by the Muskegon City Commission.
    d. Approval of a concession contract for Rix Stix Pronto Pups and Rix Stix Eats.
    e. Approval of 2015-16 water treatment sodium hypochlorite bids.
    f. A traffic control order adding a stop sign to the corner of Indiana Ave and Harbor Towne Circle.
    g. Approval of construction agreement with MDOT for Henry Street (Sherman to Hackley). While the engineer's estimate was slightly over $800,000, the actual bids came in slightly over $900,000. We are proposing to proceed with the project as bid rather than rebidding the project, as our staff feels that the bids are unlikely to return more favorably. Additionally, we feel that construction for this project needs to begin soon, and not be postponed to late summer or fall.
    h. Approve the bids for the 2015 pavement marking program - this is approved annually by the Muskegon City Commission.
    i. Approval of the 2015 bids for miscellaneous highway maintenance materials concrete - this is approved annually by the Muskegon City Commission.
    j. Approval of the purchase of two Ford Interceptor Sport Utility Vehicles for the police department. The vehicles were budgeted and planned for in 2015.

k. Approval of the purchase of DPW Fleet Vehicles. These vehicles will be used as replacements to vehicles that are retired or soon-to-be retired. One vehicle will be used in the Parks Department and another will be used in the Highway Department.

4. Under Hearings/Other/New Business we have four topics for discussion:

   a. Approval of the sale of 1581 Division. This CNS project was originally approved for sale to another buyer earlier in 2015. That sale fell through, and we now have a new buyer under contract. We are recommending approval.

   b. We are asking for an increase in the public relations budget. The increase requested is $40,000. We would like to use most of the new funds to purchase/install banners on light poles in the downtown area. We have a number of poles with brackets that haven't had banners installed on them in a number of years. Additionally, we have a number of brackets missing and/or broken. These funds will cover the costs to purchase/install banners and brackets (as needed). The remaining funds will be used to design a new logo for the city (as that was identified by our image committee as a high priority), and design some items to be sold and/or handed out at special events. This is more of a long-term investment, as many of the expenses will last over multiple fiscal years. I recommend approval. It's important to note that this is only one aspect of our plan to improve our image. We continue to focus resources on crime reduction, blight abatement, and overall quality of life – we also plan to present a proposal to begin updating our aging housing stock in the coming weeks. In the meantime, we need to adequately market our community as great place to live/work/visit.

If there are questions on any agenda items, please try to let staff know in advance, and we will be sure to have the appropriate data/research available at the meeting.

Date: April 14, 2015

To: Honorable Mayor & City Commissioners

From: City Clerk’s Office

RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the March 28, 2015 City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 24, 2015

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, MI at 5:30 p.m., Tuesday, March 24, 2015.

Mayor Gawron opened the meeting with prayer after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Byron Turnquist, Ken Johnson, Eric Hood, Willie German, and Dan Rinsema-Sybenga, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

2015-19 INTRODUCTIONS/PRESENTATION:

A. Presentation by Lake Hawks. Congratulations to the Lake Hawks on a great season!

2015-20 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the March 9th Commission Worksession Meeting, and the March 10th City Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. SECOND READING: Amendment to the Mobile Food Vending Ordinance. CITY CLERK

SUMMARY OF REQUEST: In 2014 the City adopted a Mobile Food Vending Ordinance. Staff encountered no issues and received no complaints. Staff believes mobile food vending units are a benefit to our City and downtown and would like to encourage more participation.

We are requesting to amend the ordinance to (1) change the amount of time a mobile food vending truck may stay in one place from 15 minutes to 30 minutes without a permit; and (2) change the distance a mobile food vending service may be parked within an existing brick and mortar restaurant from 150 feet to 50 feet.

Further, to encourage more participation, we are asking to lower the permit fees from $300 a unit, $150 for existing restaurants in the City of Muskegon, and $50 for restaurants in the Downtown Development area to be changed from a monthly fee to an annual fee.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the ordinance amendment and update the fee schedule as indicated.

C. **<u>SECOND READING: Amendment to the Special Event Parking Downtown Ordinance.</u>** CITY CLERK

SUMMARY OF REQUEST: In 2014 the City adopted a Special Event Parking Downtown Ordinance to require businesses to offer public restrooms during special events. Once it was implemented for a season, we were able to ask for input from those businesses it impacted.

Based on the feedback, staff is requesting to modify the ordinance to remove the requirement the first port-a-jon be an ADA accessible facility and include a hand washing unit. Staff is also requesting to change the language to indicate public restrooms be available within 100 feet of the parcel.

Staff is also requesting the fee schedule be changed to indicate no permit is needed for those parking under 50 vehicles and offering an annual permit of $125. A $50 per event fee will still be offered to those businesses who wish to pay a per event fee.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the ordinance amendment and update the fee schedule as indicated.

D. **<u>SECOND READING: Amendment to the Licensing Ordinance.</u>** CITY CLERK

SUMMARY OF REQUEST: This is a request to amend ordinance 50-2, Licensing, Penalties and Remedies. Staff is asking to revise the ordinance to state property owners are also subject to a municipal civil infraction if any of the provisions of the ordinance are violated.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the ordinance amendment.

E. **<u>SECOND READING: Amendment to the Zoning Ordinance.</u>** PLANNING

& ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend the zoning ordinance to allow amusement and recreational facilities, including indoor and outdoor sports fields in B-2, Convenience and Comparison Business districts.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request at their special meeting in February.

F. **SECOND READING: Lakeshore Smartzone LDFA – Plan Amendment.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City of Muskegon Local Development Finance Authority (LDFA) and City Commission approved The Lakeshore Smartzone Local Development Finance Authority and Tax Increment Financing Plan ("Plan") in 2002. The State of Michigan recently provided the opportunity to extend the Tax Increment Finance (TIF) capture for an additional five years, if the Smartzone LDFA Plans are amended to include additional projects, job creation, cooperation with other regional entities, and/or additional reporting. As this additional five years of TIF capture will assist the City in paying back the bonds that were issued for development of the MAREC facility, an amendment to the Plan was prepared. The amendment was approved by the LDFA and the Plan has been forwarded to the City Commission.

FINANCIAL IMPACT: The additional five years of tax capture will allow for the generation of approximately $175,330 in revenues from school taxes (in addition to the $331,035 generated from local taxes).

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: That the City Commission approve the resolution amending the Plan.

G. **New Special Event Request – "Standup for the Cure" Stand-up Paddleboard Event & Expo – July 11, 2015.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: "Standup for the Cure" is a 501c3 organization dedicated to raising awareness of breast cancer and funds for the Susan G. Komen foundation. They would like to add Muskegon's Harbour Towne beach as their third event site this year, in addition to Newport Beach, CA and Miami FL. In addition to stand-up paddle boarding, they would like to have an expo-style event with vendors, music and information booths. One of their sponsors is a craft beer brewing company, and they are requesting to serve beer and possibly wine to their patrons. The alcohol would be served in 8-ounce plastic cups to event participants who have been wrist-banded after having their age verified by security staff checking identification. No spirits will be served. They expect to end the event by 3:00 p.m.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None.

H. **<u>Contract for Demolition at 1716 Sanford.</u>** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve for Community and Neighborhood Services to execute a contract with Courtade Wrecking, 1750 Alpine Ave., NW, Grand Rapids, for the demolition of the structure located at 1716 Sanford Street. This activity is under the Target neighborhood Blight Fight Program. The following bids were received:

Courtade Wrecking	$8,180.00
Press's LLC	$5,220.00 (Bid was inconclusive)

FINANCIAL IMPACT: The funding will be allocated from the City's HOME Funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

Motion by Vice Mayor Spataro, second by Commissioner German to approve the Consent Agenda as read with the exception of Item I.

ROLL VOTE: Ayes: Spataro, German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

2015-21 ITEM REMOVED FROM CONSENT AGENDA

I. **<u>Resolution in Support of Proposal 1 for Safer Roads.</u>** CITY MANAGER

SUMMARY OF REQUEST: The City of Muskegon has recently identified street repair needs in excess of $72,000,000 and supports Proposal 1 on the May 5, 2015, ballot to provide the funding needed to address our long-term street infrastructure needs. For more information please go to www.Michigan.gov/roadfunding or www.Michigan.gov/realitycheck

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval.

Motion by Commissioner Turnquist, Second by Commissioner Rinsema-Sybenga to approve Resolution in Support of Proposal 1 for Safer Roads.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, Spataro, and German

Nays: None

MOTION PASSES

2015-22 NEW BUSINESS:

A. **Bella Dawg Concession Contract for City of Muskegon Parks.** PUBLIC WORKS

SUMMARY OF REQUEST: Staff is asking permission to enter into another one-year contractual agreement with Steve Hamstra of Bella Dawg, at various City of Muskegon Parks/Facilities, located within the City of Muskegon, as determined by staff, to sell hot dogs and other minor snacks from a mobile cart. Concessionaire is also requesting that a 50' allowance between vendors be considered.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize DPW staff to enter into concession agreement with Steve Hamstra of Bella Dawg.

Motion by Commissioner Johnson, Second by Commissioner Hood to Authorized DPW staff to enter into concession agreement with Steve Hamstra of Bella Dawg.

ROLL VOTE: Ayes: Hood, Spataro, German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 5:48 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Commission Meeting Date: April 14, 2015

Date: April 8, 2015

To: Honorable Mayor & City Commission

From: CITY CLERK'S OFFICE

RE: NATIONAL BIKE TO WORK WEEK RESOLUTION

SUMMARY OF REQUEST: The City Commission is asked to adopt the attached resolution supporting National Bike to Work Week June 15 through June 19, 2015.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached resolution.

RESOLUTION TO SUPPORT NATIONAL BIKE TO WORK WEEK

WHEREAS, for more than a century, the bicycle has been an important part of the lives of Americans; and

WHEREAS, today, millions of Americans engage in bicycling as an environmentally sound form of transportation, an excellent form of fitness, and provides quality family recreation; and

WHEREAS, “Bike to Work Week” is a nationwide endeavor to educate the public about the benefits of bicycling and to increase awareness of and respect for bicyclists; and

WHEREAS, the City of Muskegon recognizes the benefits of bicycle commuting in providing exercise, decreasing air pollution, conserving fuel, decreasing traffic congestion, decreasing noise pollution, and improving the health of its citizens; and

WHEREAS, the League of Michigan Bicyclists and independent cyclists throughout our state are promoting greater public awareness of bicycle operation and safety education in an effort to reduce accidents, injuries and fatalities; and

WHEREAS, bicycle transportation is an integral part of the “multi-modal” transportation system planned for by city, state and local transportation government agencies; and

WHEREAS, we recognize and encourage cycling as an important means of transportation, and support potential new cyclists in joining our community; and

WHEREAS, Ride On! Muskegon County Bikes to Work Week Committee encourage all citizens to ride their bicycles to work, to the store, to the park, around their neighborhoods and with friends and family to promote the personal and societal benefits achieved from bicycling;

NOW THEREFORE I, Stephen J. Gawron, Mayor of the City of Muskegon, do hereby proclaim June 15-19, 2015 as “Bike to Work Week” in Muskegon, MI and encourage its observance to all citizens.

Signed this 14th day of April 2015.

____

Stephen J. Gawron
Mayor

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Request to Fly the Norwegian Flag

SUMMARY OF REQUEST: Sons of Norway are requesting permission to fly the Norwegian Flag at City Hall beginning Friday, May 15th, 2015 at 9:00 a.m. through the weekend, to be taken down the morning of Monday, May 18, 2015 in honor of Norway's Constitution Day (Independence Day), which falls on Sunday, May 17, 2015.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the request.

Commission Meeting Date: April 14, 2015

Date: April 8, 2015

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: PA 422 of 2014 – Cemetery Perpetual Care Fund

SUMMARY OF REQUEST: Public Act 422 of 2014, which was signed by the Governor, allows a municipality that has a municipally owned cemetery to establish and maintain an irrevocable endowment and perpetual care fund as a component fund within a community foundation, by entering into an irrevocable agreement with the community foundation.

FINANCIAL IMPACT: Additional cemetery endowment earnings potentially will reduce the use of general fund revenue for cemetery maintenance.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approval of the City of Muskegon Cemetery Perpetual Care Fund Agreement with the Community Foundation for Muskegon County.

COMMITTEE RECOMMENDATION: N/A

City of Muskegon
Finance Administration

Memorandum

To: Mayor and City Commissioners

From: Finance Director

Date: April 8, 2015

Re: Public Act 422 of 2014

With the signing of Public Act 422 of 2014 by Governor Snyder, it is now possible for the City to consider creating a fund at the Community Foundation for Muskegon County to house its cemetery perpetual care funds. Public Act 422 of 2014 is the culmination of years of effort that began with an idea of the City's former Finance Director and the work of the City Attorney, Community Foundation, and others to make it possible. Senator Goeff Hansen sponsored Senate Bill 1125 which was enacted as Public Act 422 of 2014.

The bill amended Public Act 215 of 1937, which authorizes municipalities to own or control cemetery or burial grounds, to do the following:

- Allow a municipality to establish an endowment and perpetual care fund for a municipally owned cemetery as part of an agreement with a community foundation.

- Require the community foundation annually to authorize two distributions of earnings from the fund to the municipality for care and maintenance of the cemetery.

- Require the cemetery to maintain records regarding the use of earnings from the fund.

- Allow the community foundation's fees and costs associated with the agreement to be paid from the principal of the fund.

- Specify information that the community foundation must submit to the municipality in an annual fund statement.

It is anticipated that an agreement between the community foundation and city will be included on the agenda for a future City Commission meeting.

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

Act No. 422
Public Acts of 2014
Approved by the Governor
December 27, 2014
Filed with the Secretary of State
December 30, 2014
EFFECTIVE DATE: December 30, 2014

STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Senator Hansen

ENROLLED SENATE BILL No. 1125

AN ACT to amend 1937 PA 215, entitled "An act to authorize municipalities to own or control cemetery or burial grounds; to provide for perpetual care and maintenance; and to permit municipalities to authorize the creation of joint cemetery associations," by amending the title and section 3 (MCL 128.3), the title as amended and section 3 as added by 1980 PA 366, and by adding section 4.

The People of the State of Michigan enact:

TITLE

An act to authorize municipalities to own or control cemetery or burial grounds; to provide for perpetual care and maintenance; to provide for endowment and perpetual care funds; and to permit municipalities to authorize the creation of joint cemetery associations.

Sec. 3. As used in this act:

(a) "Community foundation" means an organization that meets all of the following requirements:

(*i*) Has been in existence for at least 10 years.

(*ii*) Has assets of at least $10,000,000.00.

(*iii*) Qualifies for exemption from federal income taxation under 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).

(*iv*) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality.

(*v*) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the geographic area served.

(*vi*) Is publicly supported, as defined by 26 CFR 1.170A-9(f).

(*vii*) Meets the requirements for treatment as a single entity under 26 CFR 1.170A-9(f)(11).

(*viii*) Is not an organization described in section 509(a)(3) of the internal revenue code, 26 USC 509(a)(3).

(*ix*) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(*x*) Maintains continually at least 1 part-time or full-time employee beginning not later than 6 months after the community foundation is incorporated or established.

(*xi*) Is subject to an annual independent financial audit.

(*xii*) For a community foundation that is incorporated or established after January 9, 2001, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing community foundation.

(b) "Municipality" means a city, village, township, or county.

Sec. 4. (1) Subject to this section, to lessen the burden of government, each municipality with a municipally owned cemetery may establish and maintain an irrevocable endowment and perpetual care fund as a component fund within a community foundation by entering into an irrevocable agreement with the community foundation.

(2) The amounts deposited into the fund shall be held in perpetuity by the community foundation except that the community foundation shall annually authorize 2 distributions of interest and other earnings to the municipality for care and maintenance of the cemetery. The withdrawals shall be documented. The cemetery shall maintain records showing that earnings from the fund are used exclusively for endowment and for care and maintenance of the cemetery. The community foundation is not responsible for ascertaining that money paid to the municipality is expended for the limited purposes authorized in this subsection.

(3) Subject to the terms of the agreement, the fees and costs of the community foundation for services under this section and the agreement may be paid from the principal of the fund.

(4) The community foundation shall submit to the legislative body of the municipality an annual fund statement that includes all of the following information for the reporting period:

(a) Beginning and ending fund balances.

(b) Deposits to the fund, including interest and earnings from fund investments.

(c) Documentation of distributions from the fund under subsection (2).

(d) Documentation of any expenditures under subsection (3).

(5) As used in this section, "fund" means an endowment and perpetual care fund established under subsection (1).

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gary L Randall

Clerk of the House of Representatives

Approved ....

....

Governor

COMMUNITY FOUNDATION *for* MUSKEGON COUNTY
ORGANIZATION ENDOWMENT FUND AGREEMENT

CITY OF MUSKEGON CEMETERY PERPETUAL CARE FUND

AGREEMENT made _______________, 2015 between the City of Muskegon (the "CITY") and the COMMUNITY FOUNDATION *for* MUSKEGON COUNTY (the "Foundation"), a Michigan non-profit corporation.

This agreement is made with reference to the following facts:

A. The CITY is presently a tax-exempt organization.

B. The Foundation is a publicly-supported community foundation, meeting the public support test of IRC §509(a) and organized and operated exclusively for charitable purposes as provided in IRC §501(c)(3) and is a “Community Foundation” as defined in MCL 128.3.

C. The CITY desires to establish a permanent Endowment Fund with the Foundation which shall be known as the **City of Muskegon Cemetery Perpetual Care Fund** (the "Fund").

D. The Foundation, pursuant to the terms of this agreement and the restrictions imposed hereby, desires to accept the initial contribution of CITY as well as any subsequent donations to the Fund, and to administer and distribute the same in accordance with the terms and conditions of this agreement.

1. **Establishment of Fund**. The Foundation acknowledges receipt of $1,000,000.00_ as the initial property of the Fund.

2. **Property of the Fund**. The Fund shall include the property received to establish the Fund, such property as may later be transferred to the Foundation by the CITY or from any other source for inclusion in the Fund and accepted by the Foundation, and all undistributed income from the Fund. The Fund shall be the Foundation’s property held by it in its corporate capacity and shall not be deemed a trust Fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived therefrom, in accordance with the Articles of Incorporation and Bylaws of the Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles and Bylaws.

3. **Designation of Purposes**. The Fund shall be used for the care and maintenance of the cemeteries that are operated by the CITY.

4. **Distributions of Income**. All or a portion of the spendable income (as defined herein) of the Fund shall be distributed to the CITY upon the written request of the CITY, which may be submitted periodically to the Foundation. The request shall include a CITY Commission written resolution approving the request for a distribution from the Fund. The Community Foundation shall annually authorize 2 distributions of interest and other earnings to the CITY for care and maintenance of the CITY’s cemeteries.

5. **Other Distributions**. Distributions in excess of the spendable income of the Fund may be made to the CITY as the Foundation’s Board of Trustees determines. Recommendations for such distributions may be made from time to time to the Foundation by the CITY’s Commission as provided in Paragraph 4 above. Excess distributions may be made only from the portion of the Fund’s balance which represents contributions made by the CITY plus allocated investment realized/unrealized gains

and/or losses to such portion. Recommendations of the CITY's Commission shall be solely advisory and not binding on the Foundation.

6. **Successors to the Donor**.

   a. The Fund will continue for the exclusive use and benefit of the successor or surviving organization if the CITY merges or consolidates with another entity which is also a tax-exempt organization.

   b. Upon dissolution of the CITY, the Fund shall continue for the benefit of such other tax exempt organization as identified by the CITY Commission, providing such identification is consistent with the charitable purposes of the Foundation. Any designation made under this section shall be in writing and shall be delivered by the CITY to the Foundation prior to the filing of legal dissolution of the CITY.

   c. If the CITY fails to identify such other tax-exempt organization or such identification is not consistent with the tax-exempt status of the Foundation, the Fund shall become a part of the Unrestricted Endowment of the Foundation.

7. **Variance**.
   a. The Foundation agrees that if its Board of Trustees proposes to exercise the variance power under Article VIII, Section (8) of the Foundation's Bylaws, the exercise of such power shall not be effective earlier than at least 30 days after the Foundation notifies CITY in writing of (i) its intent to exercise such power and (ii) the manner in which the Foundation proposes to vary the purposes, uses, or methods of administration of the Fund. During the notice period, CITY may advise the Foundation of its views regarding the proposed exercise of the power and take such other action as it deems appropriate. If the Foundation becomes aware of any other action instituted or proposed by any person to vary the purposes, uses, or methods of administration of the Fund, it will promptly notify the CITY Commission.

   b. If the Foundation ceases to be a qualified charitable organization or if the Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities, properly chargeable to the Fund, be distributed to CITY. If the CITY is not then a qualified tax-exempt organization, said assets shall be distributed in such manner and to such organization or organizations in Muskegon County as satisfies the requirements of a qualified tax-exempt organization and serves purposes similar to those of the CITY.

   c. Notwithstanding anything in this agreement or in the Foundation's Articles or Bylaws to the contrary, the Foundation agrees not to exercise the modification provisions contained in Article VIII of its Bylaws except to the extent and as may be required from time to time by the laws of the State of Michigan or by the Internal Revenue Code, including the rules and regulations with respect thereto, in order to qualify the Organization Endowment Fund as a component part of the Foundation. Internal Revenue Service regulations presently require that any restriction or condition may be modified if it becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Muskegon County area.

8. **Definitions and Construction**.
   a. As used in this agreement:

      i. "Qualified charitable organization" means an organization described in §501(c)(3) and which is other than a private foundation under §509(a) of the Internal Revenue Code.

ii. References to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986 as the same may be amended from time to time and the corresponding provision of any future U.S. Internal Revenue Code.

iii. "Spendable income" means the amount determined under the spending rule policy being used by the Foundation for its component Funds (less fees).

b. It is intended that the Fund shall be a component part of the Foundation and that nothing in this agreement shall affect the status of the Foundation as an entity which is a qualified charitable organization. This agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of the Foundation.

c. Each Fund is charged two fees. One is the investment manager fee, which is negotiated with the various managers and may vary from year to year. This fee is currently included in the total net investment gains and/or losses that are applied to the Fund quarterly. The second is a Foundation administrative fee for the Fund which is currently at .5% and reviewed annually. The administrative fee is deducted from the Fund. If there are transfers of property to the Fund on any day after the first day of the Foundation's fiscal year, only a pro-rata portion of the annual fees will be charged against the Fund.

9. **<u>Gift Acknowledgments</u>**. The Foundation shall make all information with respect to the Fund available to the CITY during normal business hours of the Foundation, or online, with authorization, but not limited to, name, address, amount of gift and restrictions on gift, if any.

10. **<u>Copies of Agreement</u>**. The CITY and the Foundation may furnish copies of this agreement to other potential donors to the Fund to demonstrate the protocol and procedures that have been put in place with regard to the administration and disbursement of the Fund.

The Parties execute this Agreement by its duly authorized officers effective as of the day and year above as evidence of their agreement.

CITY OF MUSKEGON CEMETERY PERPETUAL CARE FUND

By: ____
Stephen Gawron, Mayor, City of Muskegon

COMMUNITY FOUNDATION *for* MUSKEGON COUNTY

By: ____
Chris A. McGuigan, President/CEO

AGENDA ITEM NO._____________

CITY COMMISSION MEETING ____________________

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: April 14, 2015

SUBJECT: Rix Stix Pronto Pups and Rix Stix Eats Concession Contract for City of Muskegon Parks.

SUMMARY OF REQUEST:
Staff is asking permission to enter into a 1-year contractual agreement with Ralph ”Rick” Paine III of Rix Stix Pronto Pups/Rix Beach Eats, at various City of Muskegon Parks/Facilities, located within the City of Muskegon, and as determined by staff, to sell pronto pups and various other food items from two mobile trucks. Concessionaire is also requesting that a 50’ interval/distance between vendors be considered.

FINANCIAL IMPACT:
Concession revenue is 10% of gross receipts. Commission revenue is unknown at this time as this is the first year in business for the Concessionaire at City of Muskegon Parks.

BUDGET ACTION REQUIRED:
None

STAFF RECOMMENDATION:
Authorize DPW staff to enter into concession agreement with Ralph “Rick” Paine III of Rix Stix Pronto Pups/Rix Beach Eats.

COMMITTEE RECOMMENDATION:

Date: April 14, 2015

To: Mayor and City Commission

From: Dept of Public Works - Director

RE: 2015/16 Water Treatment Sodium Hypochlorite Bids

SUMMARY OF REQUEST:

Recommend endorsement of lowest responsible bidder to supply sodium hypochlorite for the water filtration plant

FINANCIAL IMPACT:

Annual cost of $73,590 (based on average annual water pumped to mains plus increased estimated treatment cost for Norton Shores/Fruitport).

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Staff recommends the Mayor and City Commission endorse the low bid received and allow staff to enter into a contract with Alexander Chemical for sodium hypochlorite for one year, beginning April 14, 2015.

MEMORANDUM

3/26/2015

TO: **M. AL-SHATEL – DPW DIRECTOR**

FROM: **FILTRATION PLANT**

RE: **Sodium Hypochlorite Bids – WATER FILTRATION**

Chemical Bidding

Grand Haven, Grand Rapids, Wyoming, Muskegon Heights and Holland (West Michigan Cooperative Purchasing Group) collectively bid for treatment chemicals. 3 vendors submitted bids as follows for a 1 year contract for Sodium Hypochlorite:

Sodium Hypochlorite: 1 Year Contract begins April 16, 2015. Cost per Ton:

Rowell Chemical: $142.77
Alexander Chemical: $133.80
KA Steel Chemical: $140.89

Current cost: (Alexander Chemical) $133.00/ton.

The other chemicals used at the plant are bid on a 3 year cycle (Aluminum Sulfate, Activated Carbon and Hydrofluosilicic Acid) due next year.

It is my recommendation that we request the Mayor and City Commission to approve the lowest cost bids as follows:
Sodium Hypochlorite: Alexander Chemical for 1 year at a cost of $133.80/Ton.

Liquid Sodium Hypochlorite - March 24, 2015

	Rowell Chemical	KA Steel Chemical	Alexander Chemical
Cities of Holland, Wyoming, Muskegon, Mu Grand Haven and Grand Rapids, MI. 1 Year: ending April 15, 2016			
Cost Per Ton:	$ 142.77	$ 140.89	$ 133.80
Cost Per Gallon:	0.718	0.704	0.669
Lead-time ARO	1 - 2 days	1 - 2 days	1 day

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: DPW

RE: Permanent Traffic Control Order-Install a permanent “Stop” sign at Indiana Avenue and Harbor Towne Circle per Traffic Control Work Order #17-(2015).

SUMMARY OF REQUEST:

Authorize staff to install a permanent “Stop” sign at the Southwest corner of Indiana Avenue and Harbor Towne Circle per Traffic Control Work Order # 17-(2015)

FINANCIAL IMPACT:

Cost of signs/posts and man-power to install, if approved.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize DPW staff to install a “Stop” Sign at Indiana Avenue and Harbor Towne Circle per Traffic Control Work Order #17-(2015).

COMMITTEE RECOMMENDATION:

City of Muskegon
Traffic Control Order
No. 17-(2015)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Install a permanent "Stop" sign at Southwest corner of Indiana Avenue and Harbor Towne Circle.*

Location: *Indiana Avenue and Harbor Towne Circle.*

Recommendation:

Mohammed Al-Shatel ____________ Date: 3 / 23 / 2015
Director of Public Works

____________ Date: ___/___/___
Police Chief

____________ Date: ___/___/___
City Manager

Commission Approval (required for Permanent TCO only):

____________ Date: ___/___/___
Commission Action #

Installation/removal

Date assigned: ___/___/___ By: ____________
Traffic Supervisor

Date completed: ___/___/___ By: ____________
Traffic Department Employee

☐ **Temporary**; does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent**; requires Commission Action

AGENDA ITEM NO._____________

CITY COMMISSION MEETING ____________________

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: April 14, 2015

SUBJECT: 2015 Pavement Marking Program

SUMMARY OF REQUEST:
Staff is requesting permission to enter into 1-year contractual agreement with Michigan Pavement Marking (MPM) of Wyoming, MI for Centerline Painting and Advanced Pavement Marking (APM) of West Olive, MI FOR Special Pavement Markings. This contract bid was awarded by the Muskegon County Road Commission (MCRC) and for local agencies in the Muskegon County Pavement Marking Group to enter into with MPM and APM with each member billed separately by MPM and APM for painting services requested.

FINANCIAL IMPACT:
Estimated costs for 2015 are $25,000 for both Centerline painting and Specialty Markings. Approximately $20,334 in 2011 was spent for centerline painting/special pavement markings with $16,008 in 2012, $16,999 in 2013 and $16,013 in 2014 spent for centerline painting only, through previous bids/contracts with MCRC and MPM.

BUDGET ACTION REQUIRED:
None, contractual work has been budgeted for in the Highway Majors budget.

STAFF RECOMMENDATION:
Approve request to enter into a 1-year contract with Michigan Pavement Markings for Centerline Painting and Advanced Pavement Markings for Special Pavement Markings.

COMMITTEE RECOMMENDATION:

Muskegon County Road Commission

7700 East Apple Avenue
Telephone (231) 788-2381
Muskegon, MI 49442-4999
Fax (231) 788-5793

MEMORANDUM

DATE: March 26, 2015

TO: All Pavement Marking Program Participants

Mark Timmer / ej

FROM: Mark Timmer, Sign Department Coordinator / Safety Director

RE: Pavement Marking Bid Award

At a regular meeting of the Board of County Road Commissioners held on March 18, 2015, an award of bid for the Muskegon County 2015 Pavement Marking Program was approved. If you require a board excerpt from that meeting, please contact me and I will forward one to you when it becomes available. The contractor(s) with the lowest bid(s) and therefore awarded the project is as follows:

- Michigan Pavement Marking of Wyoming, MI for **STRIPING ONLY**
- Advanced Pavement Marking of West Olive, MI for **SPECIALITY MARKINGS ONLY**

Enclosed please find bid tabulations showing unit/total prices of the various Bidders. Also, included for your information and for assisting you with your specific agreements is a bid proposal and the bid sheets associated with your specific area.

If you have any questions in the meanwhile, please contact me at your convenience.

AGENDA ITEM NO. __________

CITY COMMISSION MEETING

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: April 14, 2015

SUBJECT: Aggregates, Highway Maintenance Materials and Concrete

SUMMARY OF REQUEST:

Award bid to supply H1/32FA limestone chip blend to Verplank Trucking Company

Award bid to supply road slag to Verplank Trucking Company

Award bid to supply road gravel to Yellow Rose Transport

Award bid to supply Sylvax patching material to Unique Paving Materials

Award bid for crack sealant to Surface Coatings.

Award bid to supply bituminous products (Base and Top) to Asphalt Paving, Inc.

Award bid to supply AE-90 Asphalt Emulsions to Bit-Mat Products

Award bid to supply screened top soil to Accurate Excavators

Award bid to supply 2NS sand to Yellow Rose Transport

Award bid to supply Fill Sand to Accurate Excavators

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

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

FINANCIAL IMPACT:
$456,387.25

BUDGET ACTION REQUIRED:
None; funds appropriated in several budgets.

STAFF RECOMMENDATION:
Recommend approval of bids as outlined in Summary of Request.

To: The City Commission
From: Mohammed Al-Shatel Director of Public Works
Date: April 14, 2015
Subject: 2015 Aggregates, Highway Maintenance Materials, and Concrete

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

<u>500 ton H1/32FA Limestone Chip Blend</u> ($9,725.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	**$19.45 per ton, delivered**
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	$20.50 per ton, delivered

<u>5,000 ton Road Slag 22-A Natural</u> ($65,000.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	**$13.00 per ton, delivered**
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	$13.25 per ton, delivered

<u>500 ton Road Gravel 22-A</u> ($5,250.00)

Yellow Rose Transport	**3531 Busch Dr., Grandville, MI 49418**	**$10.50 per ton, delivered**
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	$11.00 per ton, delivered

<u>500 tons Sylvax Patching Materials – UPM-CP-7, or ASTM Specification C-136 #9 or Statite CP-6, or similar product</u> ($53,600.00)

Unique Paving Materials	**3993 E. 93rd Street, Cleveland, OH 44105**	**$107.20 per ton, delivered**
Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	$110.00 per ton, picked up

<u>50,000 pounds Crack Sealant (block form)</u> ($22,500.00)

Surface Coatings, Co.	**2280 Auburn Rd, Auburn Hills, MI 48326**	**$0.45 per pound, delivered**
Sherwin Industries, Inc	2129 West Morgan Ave., Milwaukee, WI 53221	$0.59 per pound, delivered

<u>200 ton Bituminous Asphalt Base</u> ($12,700.00)

Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	**$63.50 per ton, picked up**

<u>1,000 ton Bituminous Asphalt Top</u> ($64,500.00)

Asphalt Paving, Inc.	1000 E. Sherman Boulevard, Muskegon MI 49444-0190	**$64.50 per ton, picked up**

<u>30,000 gallons AE-90 Asphalt Emulsions</u> ($72,000.00)

Bit-Mat Products	**401 Tiernan Rd, Bay City, MI 48706**	**$2.40 per gallon, delivered**

500 yards Screened Top Soil ($3,975.00)

Accurate Excavators	**2821 Central Rd, Muskegon, MI 49445**	**$7.95 per cubic yard, delivered**
Verplank	P.O. Box 8, Ferrysburg, Muskegon, MI 49409	$8.00 per cubic yard, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	$10.00 per ton, delivered

500 ton 2NS Sand ($4,250.00)

Yellow Rose Transport	**3531 Busch Dr., Grandville, MI 49418**	**$8.50 per ton, delivered**
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	$8.90 per ton, delivered

500 ton Fill Sand ($2,600.00)

Accurate Excavators	**2821 Central Rd, Muskegon, MI 49445**	**$5.20 per cubic yard, delivered**
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	$6.00 per ton, delivered

Concrete mix as needed (*7 Sack Mix $82.00 in 2014, $90,337.25 using 2014 quantities)

Port City Redi-Mix 1780 Sheridan Road, Muskegon, MI 49442	**$92.00 per cubic yard, 7 Sack Mix, delivered**
Consumers Concrete 4400 E. Evanston Avenue, Muskegon MI 49442	$92.27 per cubic yard, 7 Sack Mix, delivered

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

85,000 gallons Calcium Chloride 38% (road brine) ($43,350.00)

Great Lakes Chloride	P.O. Box 634, Grand Haven, MI 49417	**$0.51 per gallon, spread**

15,000 gallons Calcium Chloride 32% (winter salting) ($6,600.00)

Great Lakes Chloride	P.O. Box 634, Grand Haven, MI 49417	**$0.44 per gallon, storage**

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Police SUVs

SUMMARY OF REQUEST:

The Equipment division is seeking permission to purchase 2(two) Police Interceptor SUVs to replace current units that are due retirement based on years of service and mileage. We are also asking to purchase an additional warranty for these vehicles extending our powertrain warranty to 7 years 125,000 mi.

FINANCIAL IMPACT:

$25,475.00 per SUV and $2,495.00 for each extended warranty.

BUDGET ACTION REQUIRED:

None. This is the amount budgeted for.

STAFF RECOMMENDATION:

Authorize staff to purchase 2(two) Police SUVs with extended warranty from Gorno Ford the Mi Deal State contract holder.

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: DPW Fleet Replacement Vehicles

SUMMARY OF REQUEST:

The Equipment division is seeking permission to purchase 2(two) DPW fleet vehicles, one for the Highway Dept. as a construction vehicle and the other for the Parks Dept. Maintenance Vehicle. The Highway truck will be a one ton flatbed and the Parks a three quarter ton standard cab pick up.

FINANCIAL IMPACT:

One ton $26,395.00 and Three quarter ton $21,395.00

BUDGET ACTION REQUIRED:

None. This is the amount budgeted for.

STAFF RECOMMENDATION:

Authorize staff to purchase 2(two) fleet replacement vehicles from Gorno Ford the Mi Deal State contract holder.

Commission Meeting Date: April 14, 2015

Date: April 3, 2015

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale of City-owned home at 1581 Division

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Ashley Nagelkirk for the rehabilitated home at 1581 Division, which is part of the City's HOME Program. Ms. Nagelkirk's purchase price for the home is $74,500.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through the HOME program to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.

MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY CITY-OWNED PROPERTY AT 1581 DIVISION STREET

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

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

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

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 1581 Division Street to Ashley Nagelkirk. Ms. Nagelkirk will purchase the house as an owner-occupied structure.

Adopted this 14th of April, 2015.

Ayes:

Nays:

By ______________________________
Stephen J. Gawron, Mayor

By ______________________________
Ann Marie Cummings, MMC City Clerk

AM_Resolution

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: City Clerk

RE: Public Relations Fund Budget Adjustment

SUMMARY OF REQUEST: Improving the city's image has been made a priority over the last two budget cycles. As such, many staff hours have been dedicated to working with key stakeholders to develop a plan to help change public perception. Many of our partner stakeholders have committed to fundraising for these types of activities. As the summer tourist season approaches, city staff and key stakeholders identified a number of new capital investments that we would like to undertake. Two of which we are seeking approval for today – the installation of welcoming banners on light poles throughout the downtown, and the redesign of the logo and color scheme used on many city advertisements, vehicles, buildings, paperwork, etc.

FINANCIAL IMPACT: Same.

BUDGET ACTION REQUIRED: Same.

STAFF RECOMMENDATION: Increase the Public Relations Budget by $40,000 and authorize the City Clerk to purchase and install new banners downtown and to work with Revel to design a new city logo.

Date: April 14, 2015

To: Honorable Mayor and City Commissioners

From: Engineering

RE: City – MDOT Agreement; Henry Street Construction; Sherman to Hackley

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SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the Henry Street construction between Sherman & Hackley and approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the approved federal funds of $580,000. The estimated total construction cost is $802,100 plus engineering cost.

BUDGET ACTION REQUIRED:

none at this time

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION__________

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE CONCRETE PAVEMENT WORK ALONG HENRY STREET FROM SHERMAN TO HACKLEY TOGETHER WITH OTHER NECESSARY RELATED WORK ITEMS AND AUTHORIZATION FOR MAYOR STEPHEN J. GAWRON AND CITY CLERK, ANN CUMMINGS, TO EXECUTE SAID CONTRACT

Moved by ____________________________________ and supported by

Commissioner __________________________ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **15-5088** between the Michigan Department of Transportation and the City of Muskegon for the **Concrete pavement work along Henry Street from Sherman to Hackley** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **15-5088** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this ____________ day of ____________, 2015.

BY ____________________________________

Stephen J. Gawron, Mayor

ATTEST ____________________________________

Ann Cummings, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on ____________**, 2015**. 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 Cummings, City Clerk

STP

DA

Control Section	STUL 61121
Job Number	123929A
Project	STP 1561(006)
Federal Item No.	HK 0206
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	15-5088

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of ________________________, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated March 10, 2015, attached hereto and made a part hereof:

> Concrete pavement work along Henry Street from Sherman Boulevard to Hackley Avenue; including sidewalk ramp 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, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

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

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

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

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

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

A. Design or cause to be designed the plans for the PROJECT.

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

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

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

5. The PROJECT COST shall be met in part by contributions by the Federal Government. Federal Surface Transportation Funds shall be applied to the eligible items of the PROJECT COST up to the lesser of: (1) $580,000, or (2) an amount such that 81.85 percent, the

normal Federal participation ratio for such funds, is not exceeded at the time of the award of the construction contract. 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 an effective billing rate and the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses. The initial effective billing rate for the federal funding of the PROJECT is calculated by using the federal funding for the PROJECT set at the time of the award of the construction contract, as described in Section 5, and dividing by the total costs of the PROJECT eligible for federal funding and authorized at the time of the award of the construction contract.

The effective billing rate for the federal funding of the PROJECT is determined by the current funding authorization for the PROJECT and may change as the PROJECT progresses and funding authorizations are increased or decreased.

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

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

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

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (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 et seq., as amended.

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 et seq., as amended, 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 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

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

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

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

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

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

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

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

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

CITY OF MUSKEGON	MICHIGAN DEPARTMENT OF TRANSPORTATION
By____________________ Title:	By____________________ Department Director MDOT
By____________________ Title:	

REVIEWED CONTRACT ADMIN 3/10

FORM APPROVED 3-17-2015 RM ASSISTANT ATTORNEY GENERAL

APPROVED BY: Administrator Real Estate 3-19-15 Date

March 10, 2015

EXHIBIT I

CONTROL SECTION	STUL 61121
JOB NUMBER	123929A
PROJECT	STP 1561(006)

ESTIMATED COST

CONTRACTED WORK

Estimated Cost	$802,100

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$802,100
Less Federal Funds*	$580,000
BALANCE (REQUESTING PARTY'S SHARE)	$222,100

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

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

    a. FAPG (6012.1): Preliminary Engineering

    b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

    c. FAPG (23 CFR 635A): Contract Procedures

    d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

    a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

    b. FAPG (23 CFR 140B): Construction Engineering Costs

    c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

    d. FAPG (23 CFR 635A): Contract Procedures

    e. FAPG (23 CFR 635B): Force Account Construction

    f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) 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, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

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 Education
Accounting Service Center
Hannah Building
608 Allegan Street
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 Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 will 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 ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any 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; treatment; 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 shall, 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 its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall 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 itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State 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, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan 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 Michigan 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 Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

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APPENDIX B
TITLE VI ASSURANCE

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

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment 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 contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the 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 facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it 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 Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

   a. Withholding payments to the contractor until the contractor complies; and/or

   b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material 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 Department or the USDOT 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 from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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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.**