

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 28, 2006

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ **CALL TO ORDER:**
- ❑ **PRAYER:**
- ❑ **PLEDGE OF ALLEGIANCE:**
- ❑ **ROLL CALL:**
- ❑ **HONORS AND AWARDS:**
- ❑ **INTRODUCTIONS/PRESENTATION:**
- ❑ **CONSENT AGENDA:**
 - A. Approval of Minutes. CITY CLERK
 - B. Appointment to the Zoning Board of Appeals. CITY CLERK
 - C. 2006, 2007 and 2008 Street Sweeping Contract. PUBLIC WORKS
 - D. FIRST READING: Zoning Ordinance Amendment to the Sign Ordinance.
PLANNING & ECONOMIC DEVELOPMENT
 - E. FIRST READING: Zoning Ordinance Amendment to Article II (Definitions). PLANNING & ECONOMIC DEVELOPMENT
 - F. FIRST READING: Zoning Ordinance Amendment – Flood Hazard Areas.
PLANNING & ECONOMIC DEVELOPMENT
 - G. City - MDOT Agreement for Lakeshore Drive, McCracken to Laketon.
ENGINEERING
 - H. City - MDOT Agreement for Park Street, Laketon to Southern Avenue.
ENGINEERING
 - I. Budgeted Meter Reading Equipment Replacement. PUBLIC WORKS
 - J. Consideration of Proposals for Right of Way Survey on Shoreline Drive.
ENGINEERING
- ❑ **PUBLIC HEARINGS:**
 - A. Designation of Cole's Quality Foods and Surrounding Area as a Neighborhood Enterprise Zone. PLANNING & ECONOMIC DEVELOPMENT

B. Request for an Industrial Facilities Exemption Certificate - Ameriform Inc. PLANNING & ECONOMIC DEVELOPMENT

❑ COMMUNICATIONS:

❑ CITY MANAGER'S REPORT:

❑ UNFINISHED BUSINESS:

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish 442 W. Muskegon. PUBLIC SAFETY

❑ NEW BUSINESS:

A. Request for Preliminary Planned Unit Development Approval for 1050 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

B. FIRST READING: Rezoning Request for Properties Located at 1438, 1446, 1458, 1468, and 1478 Terrace Street. PLANNING & ECONOMIC DEVELOPMENT

C. FIRST READING: Zoning Ordinance Amendment to Article XXII, Nonconforming Uses. PLANNING & ECONOMIC DEVELOPMENT

D. Consideration of Bids for Nims Street Tank Painting (W-651). ENGINEERING

E. Muskegon Area Intermediate School District Encroachment Agreements. ENGINEERING

F. Terrace Lots Request for Proposals. CITY MANAGER

G. Arialink Telecommunication, LLC – METRO Act Permit Application Request. ASSISTANT CITY MANAGER

H. Concurrence with the Housing Board of Appeals Notice and Order to Demolish 1272 Spring, 530 Catherine, 1357 Terrace-Garage, and 1435 Park. PUBLIC SAFETY

❑ ANY OTHER BUSINESS:

❑ PUBLIC PARTICIPATION:

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

❑ ADJOURNMENT:

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

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Gail A. Kunding, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the March 13th Commission Worksession, and the March 14th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 28, 2006

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, March 28, 2006.

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

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

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

2006-28 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the March 13th Commission Worksession, and the March 14th Regular Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Appointment to the Zoning Board of Appeals. CITY CLERK

SUMMARY OF REQUEST: To appoint Lori Gomez-Payne to the Zoning Board of Appeals.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To make the appointment.

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended the appointment at their March 6th meeting.

D. FIRST READING: Zoning Ordinance Amendment to the Sign Ordinance.

PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2334 (Signs, #5,a) of Article XXIII (General Provisions) to allow a building wrap for a building undergoing construction or major renovation.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend language to allow building wraps.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their March 16th meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

E. FIRST READING: Zoning Ordinance Amendment to Article II (Definitions). PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Article II (Definitions) to add a definition for "Building Wrap".

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to add a definition for "Building Wrap".

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the amendment at their March 16th meeting. The vote was unanimous in favor of the amendment with J. Aslakson and T. Michalski absent.

F. FIRST READING: Zoning Ordinance Amendment – Flood Hazard Areas. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2323 (Flood Hazard Areas, #3) of Article XXIII (General Provisions) regarding reference numbers for the Michigan Residential Code and Michigan Building Code.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend the language for Flood Hazard Areas.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their March 16th meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

G. City - MDOT Agreement for Lakeshore Drive, McCracken to Laketon. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the milling and resurfacing of Lakeshore Drive from McCracken to Laketon and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is capped at \$375,000 but not to exceed 75% of eligible cost. The estimated total construction cost (without engineering which is not eligible) of the project is \$500,000.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

STAFF RECOMMENDATION: That the agreement and resolution be approved.

I. Budgeted Meter Reading Equipment Replacement. PUBLIC WORKS

SUMMARY OF REQUEST: Approval to purchase two SSI AR 4002 Solid State Interrogators – Hand Held Meter Reading Units. Currently, the City owns four units that are 13 years old. This proposal is intended to replace two this year and two in 2007 (under a future request).

FINANCIAL IMPACT: Total cost \$11,600.

BUDGET ACTION REQUIRED: None, included in 2006 Budget.

STAFF RECOMMENDATION: Approve purchase from ETNA Supply.

J. Consideration of Proposals for Right of Way Survey on Shoreline Drive.
ENGINEERING

SUMMARY OF REQUEST: Enter into an engineering services agreement with Holland Engineering out of Holland to perform the necessary survey collection, drawings of publicly owned properties and preparation of right-of-way description for Shoreline Drive as requested by MDOT.

Holland Engineering was one of four firms to submit quality based proposals which were reviewed by staff from both MDOT and the City. Upon review of qualifications, scope and project team, Holland was deemed as the most qualified and a costed proposal was requested (following MDOT's procedure). After review of the cost verses the scope, Holland Engineering appears to be well within the preliminary estimate of \$100,000 for such services at a not to exceed cost of \$73,602.

FINANCIAL IMPACT: The cost for the engineering services of \$73,602.

BUDGET ACTION REQUIRED: None, this task is an eligible build Michigan III grant for Shoreline Drive expense.

STAFF RECOMMENDATION: Enter into an engineering services agreement with Holland Engineering.

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

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

Nays: None

MOTION PASSES

2006-29 ITEMS REMOVED FROM THE CONSENT AGENDA:

C. 2006, 2007 and 2008 Street Sweeping Contract. PUBLIC WORKS

SUMMARY OF REQUEST: To award a three-year contract to provide four annual street sweepings to Tri-Us Services, Inc., 78 N. Ball Creek Road, Kent City, Michigan.

FINANCIAL IMPACT: \$148,981.60 each year; \$446,944.80 over the course of the contract. Excludes special requests charged at \$115/hour.

BUDGET ACTION REQUIRED: None, monies appropriated in highway and state trunkline budgets.

STAFF RECOMMENDATION: Approval of this request.

Motion by Commissioner Shepherd, second by Commissioner Spataro to award the 2006, 2007 and 2008 Street Sweeping Contract to Tri-Us Services.

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

Nays: None

MOTION PASSES

H. City - MDOT Agreement for Park Street, Laketon to Southern Avenue. ENGINEERING

SUMMARY OF REQUEST: To approve the contract with MDOT for the reconstruction of Park Street from Laketon to Southern and to approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is capped at \$210,518 but not to exceed 81.85% of eligible cost. The estimated total construction cost (without engineering) of the project, including the non-participating items of watermain & sanitary sewer work is estimated at \$551,600.

BUDGET ACTION REQUIRED: None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

STAFF RECOMMENDATION: That the agreement and resolution be approved.

Motion by Commissioner Shepherd, second by Vice Mayor Gawron to approve the Michigan Department of Transportation Agreement for Park Street, Laketon to Southern Avenue.

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

Nays: None

MOTION PASSES

2006-30 PUBLIC HEARINGS:

A. Designation of Cole's Quality Foods and Surrounding Area as a Neighborhood Enterprise Zone. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To hold a public hearing on designating Cole's Quality Foods and the surrounding area as a Neighborhood Enterprise Zone, and to pass the Statement of Goals, Objectives, Policies, and Findings. Staff will be requesting that the City Commission pass a resolution creating the Neighborhood Enterprise Zone on April 25th.

FINANCIAL IMPACT: There is no direct financial impact from the designation of a Neighborhood Enterprise Zone.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To hold a public hearing on designating Cole's Quality Foods and the surrounding area as a Neighborhood Enterprise Zone, and to pass the Statement of Goals, Objectives, Policies, and Findings.

The Public Hearing opened at 5:45 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Commissioner Carter, second by Commissioner Spataro to close the Public Hearing at 5:47 p.m.

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

Nays: None

MOTION PASSES

B. Request for an Industrial Facilities Exemption Certificate - Ameriform Inc. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Ameriform Inc., 1790 Sun Dolphin, has requested the issuance of an Industrial Facilities Exemption Certificate for the property located at 1790 Sun Dolphin Drive, Muskegon. The total capital investment is approximately \$651,030 in personal property and \$324,983 in real property. This request qualifies Ameriform Inc. for a term of 12 years for real property and 9 years for personal property.

FINANCIAL IMPACT: The City will capture certain additional property taxes generated by the expansion.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate for a term of 12 years for real property and 9 years for personal property.

The Public Hearing opened at 5:48 to hear and consider any comments from the public. No public comments were heard.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to close the Public Hearing at 5:50 p.m. and approve resolution granting an Industrial Facilities Exemption Certificate for a term of 12 years for real property and 9 years for personal property to Ameriform Inc.

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

Nays: None

MOTION PASSES

2006-31 UNFINISHED BUSINESS:

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish 442 W. Muskegon. PUBLIC SAFETY

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 442 W. Muskegon is unsafe, substandard, a public nuisance, and that it be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: CDBG Funds

BUDGET ACTION REQUIRED: None

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

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 442 W. Muskegon Avenue.

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

Nays: Davis and Wierengo

Abstain: Shepherd

MOTION PASSES

2006-32 NEW BUSINESS:

A. Request for Preliminary Planned Unit Development Approval for 1050 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The request for preliminary Planned Unit Development approval for 1050 W. Western Avenue (Hartshorn Building property) is for a mixed use recreational and commercial development. The request is by John Bultema II, GLM Properties, LLC.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends preliminary approval of the preliminary Planned Unit Development provided that the conditions listed in the resolution are met.

COMMITTEE RECOMMENDATION: The Planning Commission recommended

preliminary approval of the Planned Unit Development, with the conditions listed on the resolution, at their March 16th meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

Motion by Vice Mayor Gawron, second by Commissioner Carter to grant preliminary approval of the Planned Unit Development for 1050 W. Western Avenue for mixed use recreational and commercial development.

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

Nays: None

MOTION PASSES

B. FIRST READING: Rezoning Request for Properties Located at 1438, 1446, 1458, 1468, and 1478 Terrace Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the properties located at 1438, 1446, 1458, 1468, and 1478 Terrace Street from B-2, Convenience and Comparison Business District to R-1, One Family Residential District.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the request.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their March 16th meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the rezoning request for the properties located at 1438, 1446, 1458, 1468, and 1478 Terrace from B-2, Convenience and Comparison Business District to R-1, One Family Residential District.

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

Nays: None

MOTION PASSES

C. FIRST READING: Zoning Ordinance Amendment to Article XXII, Nonconforming Uses. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Sections 2200, 2201, 2202, 2203, and 2204 (Nonconforming Uses) of Article XXII of the Zoning Ordinance.

STAFF RECOMMENDATION: Staff recommends amendment of Article XXII (Nonconforming Uses) of the Zoning Ordinance.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the amendment at their March 16th meeting. The vote was unanimous in favor of the amendment with J. Aslakson and T. Michalski absent.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the zoning ordinance amendment to Article XXII, nonconforming uses.

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

Nays: Shepherd, Carter, and Davis

MOTION PASSES – REQUIRES SECOND READING

D. Consideration of Bids for Nims Street Tank Painting (W-651).
ENGINEERING

SUMMARY OF REQUEST: We received three bids for the painting contract (W-651) for the Nims Street Tank. The two lowest bidders, M. K. Painting and G & M Painting, failed to submit the Non-Collusion Affidavit as required by the contract. The third bidder, Horizon Brothers, committed a mathematical error (submitted a bid of \$440,200 which should have been \$441,200). While staff is not recommending acceptance of any of those bids, due to the irregularities, we are however, recommending that M. K. Painting be awarded the contract since they were the lowest bidder with a bid price of \$409,700, should the Commission desire to waive those irregularities.

FINANCIAL IMPACT: The construction cost of \$409,700 plus associated engineering costs.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: If irregularities are waived, award the contract to M. K. Painting.

Motion by Commissioner Davis, second by Commissioner Wierengo to award the bid to M. K. Painting for the painting of Nims Street Tank.

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

Nays: None

MOTION PASSES

E. Muskegon Area Intermediate School District Encroachment Agreements. **ENGINEERING**

SUMMARY OF REQUEST: The Muskegon Area Intermediate School District has requested approval at the staff level for encroachment agreements needed to install future pole placements and directional bores within the right of way at various locations throughout the City.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval.

Motion by Commissioner Spataro, second by Commissioner Carter to approve the Muskegon Area Intermediate School District encroachment agreements.

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

Nays: None

MOTION PASSES

F. Terrace Lots Request for Proposals. CITY MANAGER

SUMMARY OF REQUEST: To authorize City staff to solicit proposals for the construction of the new central fire station, the development of the remainder of the Terrace lots and the redevelopment of the current central fire station.

FINANCIAL IMPACT: Development on the Terrace lots and redevelopment of the current fire station will add to the City's tax base.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

Motion by Commissioner Carter, second by Vice Mayor Gawron to request proposals for the Terrace Street lots.

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

Nays: None

MOTION PASSES

G. Arialink Telecommunication, LLC – METRO Act Permit Application Request. ASSISTANT CITY MANAGER

SUMMARY OF REQUEST: Authorize the Mayor to sign the permit application submitted by Arialink Telecom, LLC. Submittal of the permit application is in response to the City opting into the State's METRO Act. It is requested that approval be conditioned upon verification of satisfactory review of all required documentation that are supposed to accompany the request.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

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

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the Arialink Telecommunication, LLC METRO Act Permit Application request.

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

Nays: None

MOTION PASSES

H. Concurrence with the Housing Board of Appeals Notice and Order to Demolish 1272 Spring, 530 Catherine, 1357 Terrace-Garage, and 1435 Park. PUBLIC SAFETY

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures located at 1272 Spring, 530 Catherine, 1357 Terrace – garage, and 1435 Park are unsafe, substandard, a public nuisance, and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: CDBG Funds

BUDGET ACTION REQUIRED: None

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

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 530 Catherine and 1435 Park.

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

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 1272 Spring.

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

Nays: None

MOTION PASSES

Motion by Vice Mayor Gawron, second by Commissioner Shepherd to concur with the Housing Board of Appeals notice and order to demolish the garage at 1357 Terrace effective April 27, 2006.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Various comments were heard.

PUBLIC PARTICIPATION: Comments were made and a presentation was given reference the upcoming Hispanic Festival.

2006-33 CLOSED SESSION: To discuss labor negotiations.

Motion by Commissioner Carter, second by Commissioner Spataro to go into Closed Session at 7:55 p.m. to discuss labor negotiations.

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

Nays: None

MOTION PASSES

Motion by Commissioner Carter, second by Commissioner Davis to come out of Closed Session at 8:02 p.m.

VOTE: All ayes.

Motion by Commissioner Carter, second by Commissioner Spataro to authorize the Mayor and City Clerk to sign documents to move Police to MERS.

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

Nays: None

MOTION PASSES

The City Commission Meeting adjourned at 8:05 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gail A. Kunding". The signature is written in a cursive, flowing style.

Gail A. Kunding, MMC
City Clerk

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: City Clerk, Gail Kunding
RE: Appointment to the Zoning Board of Appeals

SUMMARY OF REQUEST: To appoint Lori Gomez-Payne to the Zoning Board of Appeals.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To make the appointments.

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended the appointment at their March 6th meeting.

RECEIVED

SEP 23 2005

City Clerk's Office

Date: 9.18.05

**CITY OF MUSKEGON
TALENT BANK APPLICATION**

Applications will be kept on file for one year. All applicants subject to a background check.

NAME: Lori Gomez-Payne

HOME ADDRESS: 1229 Peak St Muskegon MI 49441 Apt 1
(Street, City, State, Zip)

HOME PHONE #: 231-343-4715 WORK PHONE #: 616-844-6662

OCCUPATION: Manager EMPLOYER: Orchard Market
(If retired, give former occupation)

EDUCATION: 2 yrs of college

PERSONAL & COMMUNITY ACTIVITIES: _____

Why would you be a good member of this committee? What do you bring to the committee?

Interested in this city.

PERSONAL REFERENCES: (Please list the name and phone numbers of three personal references)

1. <u>John Aslakson</u>	<u>722-6195</u>
(Name)	(Phone Number)
2. <u>Judy Hayner</u>	<u>744-9872</u>
(Name)	(Phone Number)
3. <u>Greg Roberts</u>	<u>755-6007</u>
(Name)	(Phone Number)

PLEASE INDICATE BOARDS/COMMISSIONS/COMMITTEES INTERESTED IN SERVING ON - MARKING #1 AS YOUR FIRST PREFERENCE:

- | | |
|---|---|
| ☐ Board of Canvassers | ☐ Housing Code Board of Appeals |
| ☐ Board of Review | ☐ Housing Commission |
| ☐ Cemetery Committee | ☐ Income Tax Board of Review |
| ☐ Citizen's Police Review Board | ☐ Land Reutilization Committee |
| ☐ City Employees Pension Board | ☐ Leisure Services Board |
| ☐ Civil Service Commission | ☐ Loan Fund Advisory Committee |
| ☐ CDBG-Citizen's District Council | ☐ Local Develop. Finance Authority |
| ☐ Construction Board of Appeals | ☐ Local Officer's Compensation Com. |
| ☐ District Library Board | ☐ Planning Commission |
| ☒ Downtown Development Authority/Brownfield Board | ☐ Police/Fireman's Pension Board |
| ☐ Election Commission | ☐ Public Relations Committee |
| ☐ Equal Opportunity Committee | ☒ Zoning Board of Appeals |
| ☒ Historic District Commission | |
| ☐ Hospital Finance Authority | |

Are you willing to serve on other boards/committees not checked off above? YES ☒ NO (Circle one)

* Attach Additional Sheets or Resume if Desired.

Return this form to: City Clerk's Office, 933 Terrace St., P. O. Box 536, Muskegon, MI 49443-0536

Commission Meeting Date: March 28, 2006

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Zoning Ordinance Amendment to the Sign Ordinance

SUMMARY OF REQUEST:

Request to amend Section 2334 (Signs, #5,a) of Article XXIII (General Provisions) to allow a building wrap for a building undergoing construction or major renovation.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend language to allow building wraps.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 3/16 meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

March 16, 2006

Hearing; Case 2006-08: Staff initiated request to amend Section 2334 (#5, a) (Signs) of Article XXIII of the Zoning Ordinance to allow a building wrap for a building undergoing construction or major renovation.

BACKGROUND

There are many construction projects taking place, particularly in Muskegon's downtown area. Since often there are questions that arise from the public regarding what the nature of the construction is or who to contact if someone is interested in leasing space, a suggestion was made to staff regarding some sort of signage for the sites. The large banner hanging on the Watermark is an example of what could possibly be used. Also perhaps a "Coming Soon" type of sign with a picture of the future building.

By making a minor change to the sign ordinance, it would make it possible to have some larger banner type signs, known as "building wraps". These types of signs would need to be securely fastened so they aren't blowing around and causing a safety hazard. A sign of this type would also need to be removed once the project is completed or a certificate of occupancy is issued.

The City Attorney has reviewed and approved the proposed language.

NEW LANGUAGE

Deletions are crossed-out and additions are **bold**.

5. **Exempt Signs:** The following signs, provided such signs are established in a lawful manner and placed so as not to cause a nuisance or create a safety hazard, are permitted without a permit: [amended 6/03] [amended 8/05]
 - a. One real estate sale and "For Rent" or "Lease" or construction sign per property not exceeding eight (8) square feet in display area when located within a residential district. For all other districts, one real estate sale and "For Rent" or "Lease" sign per major bordering street complying with the standards of Table II. **In all districts, a building undergoing construction or major renovation may have one building wrap covering no more than 40% of one face of the building bordering a street. The building wrap must be removed at such time that the construction or renovation project is complete or a certificate of occupancy has been issued. All building**

wraps must be neatly hung, taut and secure, and may not pose a hazard public safety.

DELIBERATION

I move that the amendment to Sections 2334 (#5,a), of Article XXIII (Signs), of the Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2187

An ordinance to amend Section 2334 (Signs, #5, a) of Article XXIII (General Provisions) to allow a building wrap for a building undergoing construction or major renovation.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2334 (Signs, #5, a) of Article XXIII (General Provisions) is hereby amended to add ordinance language to allow a building wrap for a building undergoing construction or major renovation, as follows:

5. Exempt Signs: The following signs, provided such signs are established in a lawful manner and placed so as not to cause a nuisance or create a safety hazard, are permitted without a permit: [amended 6/03] [amended 8/05]

- a. One real estate sale and "For Rent" or "Lease" or construction sign per property not exceeding eight (8) square feet in display area when located within a residential district. For all other districts, one real estate sale and "For Rent" or "Lease" sign per major bordering street complying with the standards of Table II. In all districts, a building undergoing construction or major renovation may have one building wrap covering no more than 40% of one face of the building bordering a street. The building wrap must be removed at such time that the construction or renovation project is complete or a certificate of occupancy has been issued. All building wraps must be neatly hung, taut, secure, and presentable and may not pose a hazard public safety.

This ordinance adopted:

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

Nayes: None

Adoption Date: March 28, 2006

Effective Date: April 13, 2006

First Reading: March 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kunderger
Gail A. Kunderger, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: March 29, 2006.

Gail A. Kundergei
Gail A. Kundergei, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2334 (Signs #5, a) of Article XXIII (General Provisions) to allow a building wrap for a building undergoing construction or major renovation.

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

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

Published April 3, 2006

CITY OF MUSKEGON

By _____
Gail A. Kunderling, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: March 28, 2006

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *UBC*
RE: Zoning Ordinance Amendment to Article II (Definitions)

SUMMARY OF REQUEST:

Request to amend Article II (Definitions) to add a definition for "Building Wrap".

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to add a definition for "Building Wrap".

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the amendment at their 3/16 meeting. The vote was unanimous in favor of the amendment with J. Aslakson and T. Michalski absent.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2188

An ordinance to amend Article II (Definitions) of the Zoning Ordinance to add a definition for "Building Wrap".

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Article II (Definitions) is hereby amended to include the following definition for "Building Wrap":

Building Wrap – A large "banner-type" display typically composed of pictorial and text elements which is constructed of reinforced vinyl or porous mesh-like material and is temporarily attached to one or more exterior walls of a building.

This ordinance adopted:

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

Nayes: None

Adoption Date: March 28, 2006

Effective Date: April 13, 2006

First Reading: March 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kunding
Gail A. Kunding, MMC
Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: March 29, 2006.



Gail A. Kunding, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Article II (Definitions) of the Zoning Ordinance to add a definition for "Building Wrap".

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

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

Published April 3, 2006

CITY OF MUSKEGON

By _____
Gail A. Kunding, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: March 28, 2006

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Zoning Ordinance Amendment - Flood Hazard Areas

SUMMARY OF REQUEST:

Request to amend Section 2323 (Flood Hazard Areas, #3) of Article XXIII (General Provisions) regarding reference numbers for the Michigan Residential Code and Michigan Building Code.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend the language for Flood Hazard Areas.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 3/16 meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

March 16, 2006

Hearing; Case 2006-10: Staff initiated request to amend Section 2323 (#3) (Flood Hazard Areas) of Article XXIII of the Zoning Ordinance regarding reference *numbers for* the Michigan Residential Code and Michigan Building Code.

BACKGROUND

This is basically a clean up item in the Flood Hazard Area of the ordinance. This section makes reference to two section numbers, one in the Michigan Residential Building code and one in the Michigan Building Code. These section numbers have changed since the ordinance was last updated, and may change again when ever the two building codes are amended by the State of Michigan. Rather than refer to specific sections, the proposed language merely refers to the “flood-resistant construction requirements” of the two sections. By making this change, we won’t need to continually amend the zoning ordinance in the future.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are **bold**.

Changes to Section 2323, (#3): Flood Hazard Areas

3. All new construction and substantial improvement to structures shall be constructed so that the lowest floor, including basements, for residential structures shall comply with ~~Section 327~~ **the flood-resistant construction requirements** of the Michigan Residential Code or for non-residential buildings shall comply with ~~Section 1612~~ **the flood-resistant construction requirements** of the Michigan Building Code.

DELIBERATION

I move that the amendment to Sections 2323 (#3) of Article XXIII (Flood Hazard Areas), of the Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2189

An ordinance to amend Section 2323 (Flood Hazard Areas, #3) of Article XXIII (General Provisions) regarding reference numbers for the Michigan Residential Code and Michigan Building Code.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2323 (Flood Hazard Areas, #3) of Article XXIII (General Provisions) is amended regarding reference numbers for the Michigan Residential Code and Michigan Building Code, as follows:

Changes to Section 2323, (#3): Flood Hazard Areas

3. All new construction and substantial improvement to structures shall be constructed so that the lowest floor, including basements, for residential structures shall comply with the flood-resistant construction requirements of the Michigan Residential Code or for non-residential buildings shall comply with the flood-resistant construction requirements of the Michigan Building Code.

This ordinance adopted:

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

Nays: None

Adoption Date: March 28, 2006

Effective Date: April 13, 2006

First Reading: March 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kunderger
Gail A. Kunderger, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: March 29, 2006.

Gail A. Kunding
Gail A. Kunding, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2323 (Flood Hazard Areas #3) of Article XXIII (General Provisions) regarding reference numbers for the Michigan Residential Code and Michigan Building Code.

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

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

Published April 3, 2006

CITY OF MUSKEGON

By _____
Gail A. Kunding, MMC
City Clerk

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

Account No. 101-80400-5354

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Engineering
RE: City – MDOT Agreement for:
Lakeshore Dr. McCracken to Laketon

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the milling & resurfacing of Lakeshore Dr. from McCracken to Laketon and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is capped at \$375,000 but not to exceed 75% of eligible cost. The estimated total construction cost (without engineering which is not eligible) of the project is \$500,000.

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

STAFF RECOMMENDATION:

That the attached agreement and resolution be approved.

COMMITTEE RECOMMENDATION:

RESOLUTION 2006-28(g)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE MILLING & RESURFACING OF LAKESHORE DR. FROM McCracken TO LAKETON AVE. TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

Moved by Commissioner Spataro and supported by

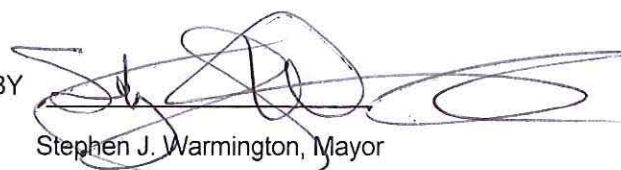
Commissioner Carter that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-5083** between the Michigan Department of Transportation and the City of Muskegon for the **Milling & Resurfacing of Lakeshore Dr. from McCracken to Laketon** within the City is in the best interests of the City of Muskegon.

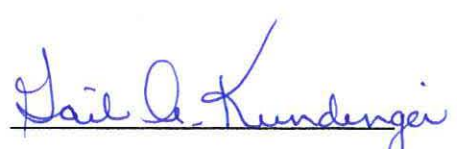
RESOLVED, that entry by the City into Contract Agreement Number **06-5083** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 28 day of March, 2006.

BY


Stephen J. Warmington, Mayor

ATTEST


Gail A. Kunding, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on March 28, **2006**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By


Gail A. Kunding, Clerk

TED (F)
NON FED

CAB
Control Section EDF 61566
Job Number 86953
Contract No. 06-5083

APR 13 2006

THIS CONTRACT 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 February 21, 2006, attached hereto and made a part hereof:

Reconstruction work along Lakeshore Drive from McCracken Street to Laketon Avenue; all together with necessary related work.

WITNESSETH:

WHEREAS, the State of Michigan is hereinafter referred to as the "State;" and

WHEREAS, the PROJECT has been approved for financing in part with funds from the State appropriated to the Transportation Economic Development Fund, hereinafter referred to as "TED FUNDS," qualifies for funding pursuant to PA 231, Section 11(2)(b); Public Act of 1987, as amended, and is categorized as:

CATEGORY "F" FUNDED PROJECT

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.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering and 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 perform, at no cost to the PROJECT, such administration of the PROJECT covered by this contract as is necessary to assist the REQUESTING PARTY to qualify for funding. Such administration may include performing such review, legal, financing, any other PROJECT related activities as are necessary to assist the REQUESTING PARTY in meeting applicable State requirements.

The DEPARTMENT shall provide the REQUESTING PARTY with a notice to proceed with the award of the construction contract for the PROJECT.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to ensure the PROJECT meets State requirements. Failure to comply with State requirements may result in forfeiture of future distributions of the Michigan Transportation Fund as described in Section 6. No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

4. The REQUESTING PARTY, under the terms of this contract, shall advertise and award the PROJECT work in accordance with the following:

- A. The REQUESTING PARTY will, at no cost to the DEPARTMENT or the PROJECT, design, or cause to be designed, the PROJECT, and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT is for its own purposes and is not to nor does it relieve the REQUESTING PARTY of liability for any claims, causes of action or judgments arising out of the design of the PROJECT.
- B. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State laws, local ordinances, and State and local standards and regulations.
- C. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the contracting procedures to be followed by the REQUESTING PARTY in connection with the solicitation of the construction contract for the PROJECT shall be based on an open competitive bid process. It is understood that the proposal for the PROJECT shall be publicly advertised and the contract awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State statutes, local ordinances, and State and local regulations.

- (1) The REQUESTING PARTY shall not award the construction contract prior to receipt of a notice to proceed from the DEPARTMENT.
 - (2) Upon verification that contractor selection by the REQUESTING PARTY was made in accordance with the terms of this contract and upon receipt of the "Request for Payment" form from the REQUESTING PARTY, the DEPARTMENT will authorize payment to the REQUESTING PARTY for the eligible amount in accordance with Section 5.
- D. The REQUESTING PARTY will, at no cost to the PROJECT or the DEPARTMENT, comply with all applicable State statutes, local ordinances, and State and local regulations, including, but not limited to, those specifically relating to construction contract administration and obtain all permits and approvals with railway companies, utilities, concerned State, Federal, and local agencies, etc., and give appropriate notifications as may be necessary for the performance of work required for the PROJECT.

The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60 and 1996 PA 173, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

- E. All work in connection with the PROJECT shall be performed in conformance with the DEPARTMENT'S current Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the PROJECT. All materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. Any changes in the scope of work for the PROJECT will require approval by the DEPARTMENT.
- F. The REQUESTING PARTY shall, at no cost to the PROJECT or to the DEPARTMENT, appoint a project engineer who shall administer the PROJECT and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT.

Should the REQUESTING PARTY elect to use consultants for construction engineering and inspection, the REQUESTING PARTY shall

provide a full-time project manager employed by the REQUESTING PARTY who shall ensure that the plans and specifications are followed.

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

- (1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- (2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.
- (3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.

5. The PROJECT COST shall be met in part by contributions by TED FUNDS. TED FUNDS Category F shall be applied to the eligible items of the PROJECT COST up to an amount not to exceed the lesser of: (1) 75 percent of the approved and responsible low bid amount, or (2) \$375,000, the grant amount. The balance, if any, of the PROJECT COST, after deduction of TED FUNDS, is the sole responsibility of the REQUESTING PARTY.

The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work.

Based upon the final cost of the PROJECT and/or a request by the REQUESTING PARTY, a payment adjustment may be initiated and/or authorized by the DEPARTMENT for eligible items of the PROJECT COST such that the total amount of TED FUNDS does not exceed the grant amount. The REQUESTING PARTY shall certify all actual costs incurred for work performed under this contract that are eligible for payment with TED FUNDS and will be required to repay any TED FUNDS it received in excess of 75 percent of the total of such costs.

6. The REQUESTING PARTY shall establish and maintain adequate records and accounts relative to the cost of the PROJECT. Said records shall be retained for a period of three (3) years after completion of construction of the PROJECT and shall be available for audit by the DEPARTMENT. In the event of a dispute with regard to allowable expenses or any other issue under this contract, the REQUESTING PARTY shall continue to maintain the records at least until that dispute has been finally decided and the time after 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.

The REQUESTING PARTY, within six (6) months of completion of the PROJECT and payment of all items of PROJECT COST related thereto, shall make a final reporting of construction costs to the DEPARTMENT and certify that the PROJECT has been constructed in accordance with the PROJECT plans, specifications, and construction contract.

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 rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 998-502 and applicable State laws and regulations relative to audit requirements.

7. At such time as traffic volumes or safety requirements warrant, the REQUESTING PARTY will 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 REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(i); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, State and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

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

9. 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 to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT. If the REQUESTING PARTY refuses to participate in the cost of remediation, the amount of TED FUNDS the REQUESTING PARTY received from Grant 390 shall be forfeited back to the DEPARTMENT.

10. If 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 DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

11. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the State.

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 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 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 is assuming any liability, control or jurisdiction.

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

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

12. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402; MSA 3.996(102). Exclusive jurisdiction of such

highway for the purposes of MCL 691.1402; MSA 3.996(102) rest with the REQUESTING PARTY and other local agencies having respective jurisdiction.

13. 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.

14. 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.

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

- A. From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and
- B. From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation, response and cleanup costs, and attorney fees or other related costs, arising out of, under, or by reason of the Agreement, including the design of the PROJECT, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents or employees.

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

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

In the event that the same occurs, for the purpose of this contract, it will be considered as a breach of this contract thereby giving the State of Michigan, the DEPARTMENT, and/or the

Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including but not by way of limitation, a judgment for money damages.

16. 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 will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

17. The REQUESTING PARTY and other local agencies, as applicable parties, understand and agree that the highway(s) or street(s) being improved under the terms of this agreement and funded with Transportation Economic Development Funds, shall not be subject to any restriction by local authorities in using certain commercial vehicles on such highway(s) or street(s). Such restrictions are in conflict with the basic concept of the Transportation Economic Development Program and Funding. The REQUESTING PARTY, by signing this agreement, agrees to obtain concurrence from other local governmental agencies within whose jurisdiction or control the highway(s) or street(s) are being improved.

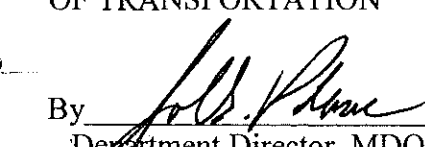
18. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective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

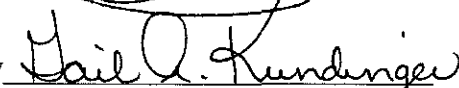
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

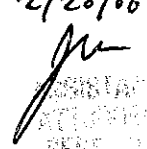
CITY OF MUSKEGON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By 
Title: Stephen J. Warmington
Mayor

By 
Department Director MDOT

By 
Title: Gail A. Kunding, MMC
City Clerk

2/28/06




February 21, 2006

EXHIBIT I

CONTROL SECTION	EDF 61566
JOB NUMBER	86953

ESTIMATED COST

Estimated PROJECT COST

Contracted Work	\$500,000
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ESTIMATED COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$500,000
Less TED FUNDS*	<u>\$375,000</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$125,000

NO DEPOSIT

*TED FUNDS are limited to an amount as described in Section 5.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

Date: 03/28/06
To: Honorable Mayor and City Commission
From: DPW
RE: Budgeted Meter Reading Equipment Replacement

SUMMARY OF REQUEST: Approval to purchase two SSI AR 4002 Solid State Interrogators - Hand Held Meter Reading Units. Currently, the city owns four (4) units that are thirteen (13) years old, this proposal is intended to replace two (2) this year and two (2) in 2007 (under a future request).

FINANCIAL IMPACT: Total Cost \$11,600

BUDGET ACTION REQUIRED: None. Included in 2006 Budget

STAFF RECOMMENDATION: Approve purchase From ETNA Supply.

Meter Reading Equipment Replacement Purchase						
			ETNA SUPPLY		SENSUS METERING	
			529 32ND SE		SYSTEMS	
			Grand Rapids, Mi		Pittsburgh PA	
QNTY						
2	SSI AR4002 Readers	WITH TRADE IN	\$9,000.00	WITH TRADE IN	\$11,600.00	
2	AR 4090 Autoguns		\$2,000.00		\$1,812.80	
1	AR4005 Master Charging Stand		\$600.00		\$0.00	charging stand included
	Set up and Training		\$0.00		\$0.00	
	Total		\$11,600.00		\$13,412.80	

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Consideration of Proposals for
Right of Way Survey on Shoreline Dr.

SUMMARY OF REQUEST:

Enter into an engineering services agreement with Holland Engineering out of Holland to perform the necessary survey collection, drawings of publicly owned properties and preparation of right of way description for the Shoreline Dr. as requested by MDOT.

Holland Engineering was one of four (4) firms to submit quality based proposals which were reviewed by staff from both MDOT & city. Upon review of qualifications, scope and project team, Holland was deemed as the most qualified and a costed proposal was requested (following MDOT's procedure). After review of the cost verses the scope, Holland Engineering appears to be well within the preliminary estimate of \$100,000 for such services at a not to exceed cost of \$73,602

FINANCIAL IMPACT:

The cost for the engineering services of \$73,602.

BUDGET ACTION REQUIRED:

None, this task is an eligible build Michigan III grant for Shoreline Dr. expense.

STAFF RECOMMENDATION:

Enter into an engineering services agreement with Holland Engineering.

COMMITTEE RECOMMENDATION:

Agenda Item No. _____

Date: March 28, 2006

To: Honorable Mayor and City Commission

From: Robert H. Kuhn, Director of Public Works

RE: 2006, 2007 and 2008 Street Sweeping Contract

SUMMARY OF REQUEST:

To award three-year contract to provide four (4) annual street sweepings to Tri-Us Services, Inc., 78 N. Ball Creek Rd, Kent City, Michigan.

FINANCIAL IMPACT:

\$148,981.60 each year; \$446,944.80 over the course of the contract. Excludes special requests charged at \$115/hour.

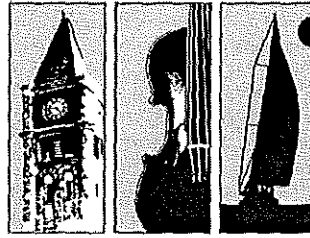
BUDGET ACTION REQUIRED:

None; monies appropriated in Highway and state trunkline budgets.

STAFF RECOMMENDATION:

Approval of this request.

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

Date: March 15, 2006
To: Honorable Mayor and City Commissioners
From: Robert H. Kuhn, Director of Public Works
Subject: 2006, 2007, 2008 Street Sweeping Contract

Two bid proposals to provide street sweeping services for years 2006, 2007 and 2008 were received as the result of solicitation in *The Chronicle*: Tri-Us Services, Inc., 78 N. Ball Creek Road, Kent City, Michigan and Sanisweep, Inc., 0-3450 Riverhill Drive NW, Grand Rapids, Michigan.

Four annual sweeps are required of 357.02 miles of non-trunkline curbed and uncurbed paved streets and paved shoulders and 27.20 miles of trunkline (city portions of Apple Avenue and Seaway Drive) curbed and uncurbed paved streets and paved shoulders. Vendor must also perform special sweeping requests as solicited.

Tri-Us Services, Inc. bid \$148,981.60 X 3 years = \$446,944.80

Annual breakdown

\$90.00 X 357.02 non-trunkline curb miles = \$32,131.80 X 4 sweeps	\$128,527.20
\$188.00 X 27.20 trunkline curb miles = \$5,113.60 X 4 sweeps	\$ 20,454.40
\$115.00 per hour, special requests	

Sanisweep, Inc. bid \$203,602.40 X 3 years = \$610,807.20

Annual breakdown

\$130.00 X 357.02 non-trunkline curb miles = \$46,412.60 X 4 sweeps	\$185,650.40
\$165.00 X 27.20 trunkline curb miles = \$4,488.00 X 4 sweeps	\$ 17,952.00
\$120.00 per hour, special requests	

Funds to cover all expenses are budgeted. Trunkline expenses are reimbursed by the state.

It is our recommendation that the contract be awarded to Tri-Us Services, Inc. In addition to being the low bidder, Tri-Us has provided satisfactory service the past nine (9) years.

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Engineering
RE: City – MDOT Agreement for:
Park Street, Laketon to Southern Ave.

SUMMARY OF REQUEST:

To approve the attached contract with MDOT for the reconstruction of Park St. from Laketon to Southern and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is capped at \$210,518 but not to exceed 81.85% of eligible cost. The estimated total construction cost (without engineering) of the project, including the non-participating items of watermain & sanitary sewer work is estimated at \$551,600.

BUDGET ACTION REQUIRED:

None at this time. The City's share of the cost will come out of the Major Street and water/sewer funds as was budgeted.

STAFF RECOMMENDATION:

That the attached agreement and resolution be approved.

COMMITTEE RECOMMENDATION:

RESOLUTION 2006-29(h)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF PARK STREET FROM LAKETON AVE. TO SOUTHERN AVE. ALONG WITH WATER, SEWER AND SIDEDWALK WORK TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

Moved by Commissioner Shepherd and supported by

Commissioner Gawron that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-5059** between the Michigan Department of Transportation and the City of Muskegon for the reconstruction of Park Street from laketon to southern within the City is in the best interests of the City of Muskegon.

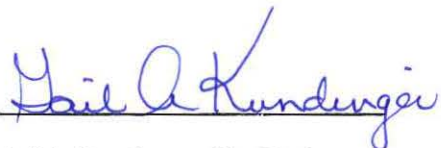
RESOLVED, that entry by the City into Contract Agreement Number **06-5059** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 28 day of March, 2006.

BY


Stephen J. Warmington, Mayor

ATTEST

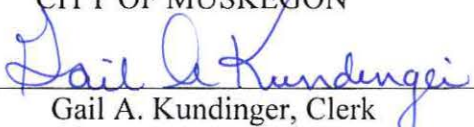

Gail A. Kunderger, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on March 28, **2006**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By


Gail A. Kunderger, Clerk

STP

DIR

Control Section	STUL 61407
Job Number	84351
Project	STP 0661(009)
Federal Item No.	HH 4588
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	06-5059

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of APR 13 2006, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated February 10, 2006, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION

Reconstruction work along Park Street from Laketon Avenue to Southern Avenue; including hot mix asphalt paving, sidewalk ramps, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION

Sanitary sewer, watermain, and sidewalk work along Park Street from Laketon Avenue to Southern Avenue; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 81.85 percent up to an amount not to exceed \$210,518. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

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

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

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

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

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

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

9. The REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

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

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

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

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

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

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

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

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

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

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

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

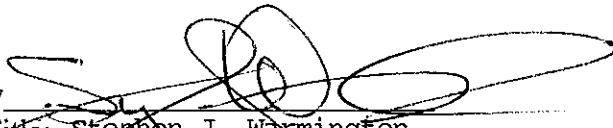
17. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

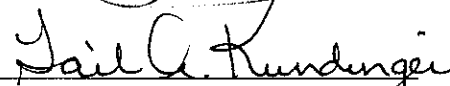
- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING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

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

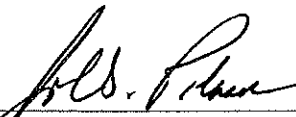
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

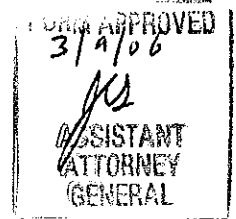
CITY OF MUSKEGON

By 
Title: Stephen J. Warmington
Mayor

By 
Title: Gail A. Kunding, MMC
City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By 
Department Director MDOT



February 10, 2006

EXHIBIT I

CONTROL SECTION	STUL 61407
JOB NUMBER	84351
PROJECT	STP 0661(009)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$398,900	\$152,700	\$551,600

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$398,900	\$152,700	\$551,600
Less Federal Funds*	<u>\$210,518</u>	<u>\$ 0</u>	<u>\$210,518</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$188,382	\$152,700	\$341,082

*Federal Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 81.85 percent up to an amount not to exceed \$210,518.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

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

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

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

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

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

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

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

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

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

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

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

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

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

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

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

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

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

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

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

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

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

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

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

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

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

APPENDIX B

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

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

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

Commission Meeting Date: March 28, 2006

Date: March 20, 2006
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department *CBK*
RE: Public Hearing for the designation of Cole's
Quality Foods and surrounding area as a
Neighborhood Enterprise Zone

SUMMARY OF REQUEST: To hold a public hearing on designating Cole's Quality Foods and the surrounding area as a Neighborhood Enterprise Zone, and to pass the attached Statement of Goals, Objectives, Policies, and findings. Staff will be requesting that the City Commission pass a resolution creating the Neighborhood Enterprise Zone on April 25th.

FINANCIAL IMPACT: There is no direct financial impact from the designation of a Neighborhood Enterprise Zone.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To hold a public hearing on designating Cole's Quality Foods and the surrounding area as a Neighborhood Enterprise Zone, and to pass the attached Statement of Goals, Objectives, Policies, and findings.

COMMITTEE RECOMMENDATION: None

City of Muskegon Statement of Goals, Objectives and Policies for Neighborhood Enterprise Zones

1. To actively support neighborhood or community-based self-help organizations which are engaged in local housing construction, conservation, or rehabilitation efforts by utilizing new and existing programs for providing additional financial resources and for seeking financial assistance;
2. To stabilize and revitalize neighborhood housing conditions by encouraging the creation of new housing units for moderate income persons and by supporting efforts that will enable people with lower incomes to remain in stable, viable, but non-exclusionary City communities;
3. To take appropriate actions to influence and facilitate increased private sector involvement in public programs that will propel and sustain City neighborhood-housing stabilization initiatives by: encouraging private residential development; devising programs which facilitate and encourage higher levels of housing construction, maintenance, repair, and rehabilitation; by considering cooperative working programs between the financial institutions, the City, property owners and the tenants to induce rental property improvements;
4. To take appropriate actions to stimulate increased demand for Muskegon housing by all household types by encouraging private market participation to provide housing choices, by considering new programs that will provide additional financial resources to reduce the cost of housing and make more favorable mortgage financing available;
5. To promote efforts to stabilize and increase the level of home ownership and owner-occupied housing in the City; and
6. To take appropriate actions to facilitate the providing of an adequate supply and mix of Muskegon housing for all household types.
7. To require adherence to and compliance with the following requirements:
 - A. All improvements must be consistent with the Zoning Ordinance provisions and Historic District standards (if applicable).
 - B. New Buildings and additions must be compatible in design with other dwellings within 400 feet.
 - C. Non-conforming multiple housing dwelling structures will be eligible for NEZ, provided that the building is made more conforming by reducing the number of dwelling units within a structure.
 - D. For continued eligibility, dwelling units and dwelling structures shall comply with zoning, buildings, housing and property maintenance codes.
 - E. Illegal activity as defined in the Padlock Ordinance will result in ineligibility for participation or continuation in the NEZ program.
 - F. Participation and continuation in the NEZ program is conditional upon timely payment of all charges and obligations to the City.

NEZ Finding

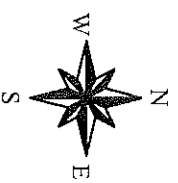
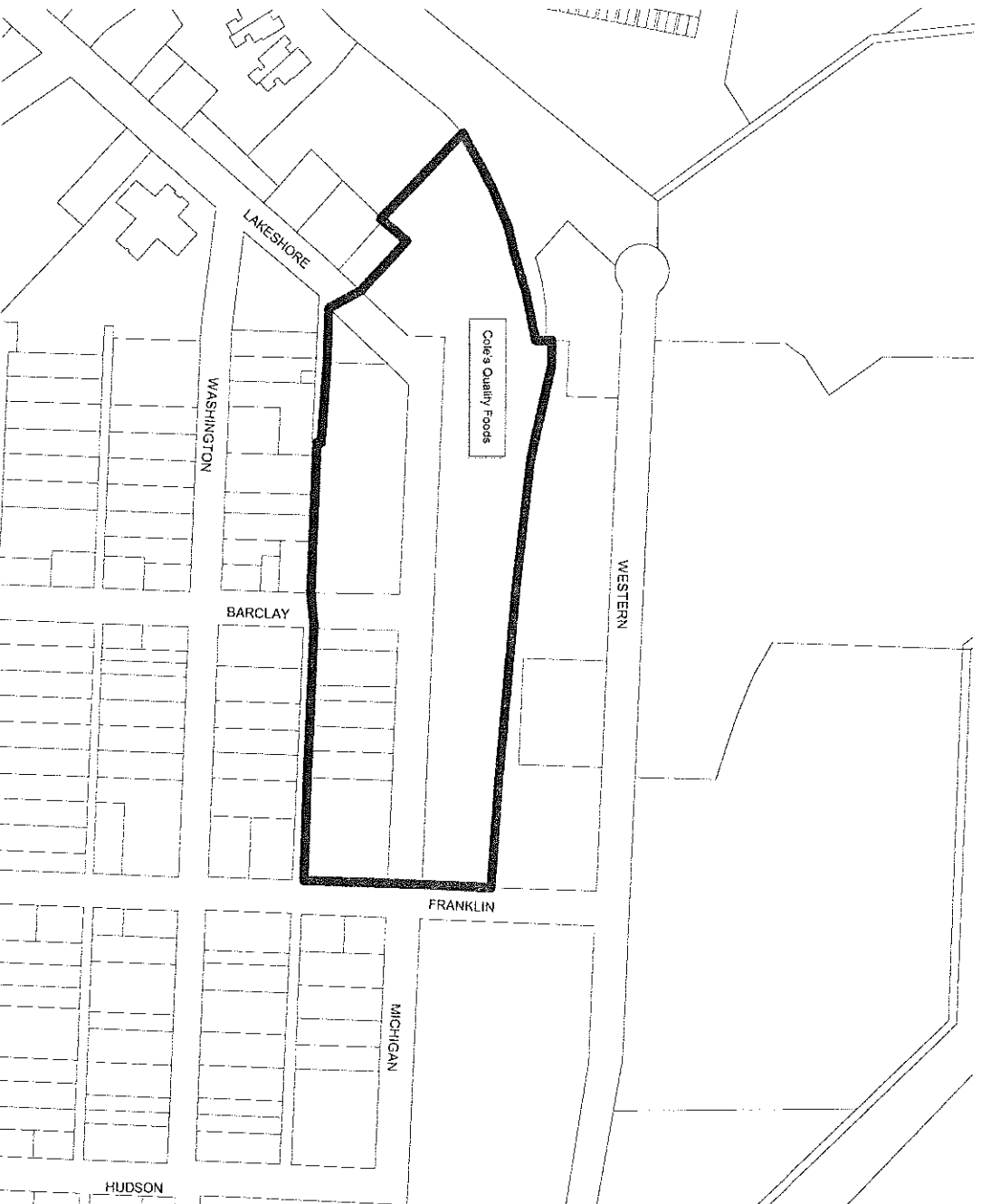
A proposed Neighborhood Enterprise Zone for Cole's Quality Foods, 1188 Lakeshore Drive, and the surrounding area, has been found to be consistent with the Master Plan and with the City's Neighborhood Preservation and Economic Development Goals.

The City's goals include promoting economic stability, diversifying economic growth, and redevelopment. It is believed that the establishment of an NEZ in this area will be a catalyst in the creation of new jobs for the area. The creation of new jobs means more money will be spent in the area thus strengthening the local economy. The people that will be working in these new jobs will be purchasing goods and services from local merchants, again strengthening the local economy.

The designation of this area as an NEZ will create tax breaks for manufacturers if those manufacturers are within this area and are able to create new jobs.

In addition to the creation of new jobs in the neighborhood, there is the possibility that some homeowners would be able to take advantage of tax incentives to rehabilitate their houses, or build new houses. This could lead to a stronger neighborhood.

Proposed NEZ Boundaries



Commission Meeting Date: March 28, 2006

Date: March 21, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Public Hearing - Request for an Industrial Facilities Exemption Certificate – Ameriform Inc.

SUMMARY OF REQUEST:

Pursuant to Public Act 198 of 1974, as amended, Ameriform Inc., 1790 Sun Dolphin, has requested the issuance of an Industrial Facilities Exemption Certificate for the property located at 1790 Sun Dolphin Drive, Muskegon. The total capital investment is approximately \$651,030.00 in personal property and \$324,983.00 in real property. This request qualifies Ameriform Inc. for a term of twelve (12) years for real property and nine (9) years for personal property.

FINANCIAL IMPACT:

The City will capture certain additional property taxes generated by the expansion (see attached Summary Sheet).

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the attached resolution granting an Industrial Facilities Exemption Certificate for a term of twelve (12) years for real property and nine (9) years for personal property.

COMMITTEE RECOMMENDATION: None



City of Muskegon Industrial Facilities Exemption Application Summary Sheet

Project Summary:

Ameriform Inc., an existing manufacturing company located at 1790 Sun Dolphin, Muskegon, Michigan, is installing new machinery and equipment to expand its present operation. Due to the fact that the company is investing \$324,983 in personal property, \$651,030.00 in real property and is creating 38 new employment opportunities, it is eligible for a nine (9) year exemption for personal property, and a 12 year exemption for real property.

Employment Information:

Racial Characteristics:

White	184	87%
Minority	28	13%
Total	216	100%

Gender Characteristics:

Male	177	78%
Female	39	18%
Total	216	100%

Total No. of Anticipated New Jobs: 38

Investment Information:

Real Property:	\$651,030
Personal Property	\$324,983
Total:	\$976,013

Property Tax Information: (Annual)

	<u>All Jurisdictions</u>	<u>City Only</u>
Total New Taxes Generated	\$24,888	\$ 5,368
Value of Abatement	\$12,444	\$ 2,684
Total New Taxes Collected	\$12,444	\$ 2,684

Income Tax Information: (Annual)

Total Additional Income Tax Generated: \$ 11,856

Company Requirements:

Adopted Affirmative Action Policy	Yes	No
Meeting w/ City Affirmative Action Director	Yes	No
Signed Tax Abatement Contract	Yes	No
Taxes Paid In Full	Yes	No
Zoning Conflicts	Yes	No

Joel Fitzpatrick
Planner II

Affirmative Action Director

Application for Industrial Facilities Tax Exemption Certificate

Issued under authority of P.A. 198 of 1974, as amended. Filing is mandatory.

INSTRUCTIONS: File the original and two copies of this form and the required attachments (three complete sets) with the clerk of the local government unit. The State Tax Commission (STC) requires two complete sets (one original and one copy). One copy is retained by the clerk. If you have any questions regarding the completion of this form or would like to request an informational packet, call (517) 373-3272.

To be completed by Clerk of Local Government Unit	
Signature of Clerk	Date received by Local Unit 2-28-06
STC Use Only	
Application Number	Date Received by STC

APPLICANT INFORMATION

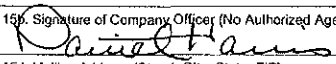
All boxes must be completed.

1a. Company Name (Applicant must be the occupant/operator of the facility) AMERIFORM, INC		1b. Standard Industrial Classification (SIC) Code - Sec. 2(10) (Four Digit Code) 3732	
1c. Location of Facility (Street, City, State, ZIP Code) 1790 SUN DOLPHIN DR		1d. Name of City/Township/Village (Indicate which) MUSKEGON	1e. County MUSKEGON
2. Type of Approval Requested ☒ New (Sec. 2(4)) ☐ Speculative Building (Sec. 3(8)) ☐ Research and Development (Sec. 2(9))		3a. School District where facility is located ORCHARD VIEW	
☐ Transfer (1 copy to only) ☐ Rehabilitation (Sec. 3(1))		3b. School Code	
		4. Amount of years requested for exemption (1-12 Years) 12 Years	
5. Thoroughly describe the project for which exemption is sought: Real Property (Type of Improvements to Land, Building, Size of Addition); Personal Property (Explain New, Used, Transferred from Out-of-State, etc.) and Proposed Use of Facility. (Please attach additional page(s) if more room is needed). The addition of rotational molding machines and vacuum forming machines. This is to handle additional business brought to Muskegon from a plant closing by S.C. Johnson and consolidating here.			
6a. Cost of land and building improvements (excluding cost of land) * Attach list of improvements and associated costs. * Also attach a copy of building permit if project has already begun.		\$324,983.00 Real Property Costs	
6b. Cost of machinery, equipment, furniture and fixtures * Attach itemized listing with month, day and year of beginning of installation plus total costs		\$651,030.00 Personal Property Costs	
6c. Total Project Costs		\$976,013.00 Total of Real & Personal Costs	
7. Indicate the time schedule for start and finish of construction and equipment installation. Projects must be completed within a two year period of the effective date of the certificate unless otherwise approved by the STC.			
		Begin Date (M/D/Y)	End Date (M/D/Y)
Real Property Improvements		10/1/04	4/30/05
Personal Property Improvements		10/1/04	4/30/05
		☒ Owned	☐ Leased
		☒ Owned	☐ Leased
8. Are State Education Taxes reduced or abated by the Michigan Economic Development Corporation (MEDC)? If yes, applicant must attach a signed MEDC Letter of Commitment to receive this exemption. ☐ Yes ☒ No			
9. Number of existing jobs at this facility that will be retained as a result of this project. 98		10. Number of new jobs at this facility expected to be created within two years of project completion. 38	
11. Rehabilitation applications only: Complete a, b and c of this section. You must attach the assessor's statement of valuation for the entire plant rehabilitation district. The SEV data below must be as of December 31 of the year prior to the rehabilitation. a. SEV of Real Property (excluding land) b. SEV of Personal Property (excluding inventory) c. Total SEV			
12a. Check the type of District the facility is located in: ☒ Industrial Development District ☐ Plant Rehabilitation District			
12b. Date district was established by local government unit 5/11/93		12c. Is this application for a speculative building (Sec. 3(8))? ☐ Yes ☒ No	

APPLICANT CERTIFICATION

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all are truly descriptive of the industrial property for which this application is being submitted.

It is further certified that the undersigned is familiar with the provisions of P.A. 198 of 1974, as amended, being Sections 207.551 to 207.572, inclusive, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Industrial Facilities Exemption Certificate by the State Tax Commission.

13a. Preparer Name Daniel Harris	13b. Phone Number (231) 733-1113	13c. Fax Number (231) 739-4502	13d. E-mail Address dharris@ameriform.us
14a. Name of Contact Person Daniel Harris	14b. Phone Number (231) 733-1113	14c. Fax Number (231) 739-4502	14d. E-mail Address dharris@ameriform.us
15a. Name of Company Officer (No Authorized Agents) Daniel Harris			
15b. Signature of Company Officer (No Authorized Agents) 			15c. Date
15d. Mailing Address (Street, City, State, ZIP) 1790 Sun Dolphin Dr. Muskegon, MI 49444		15e. Phone Number (231) 733-1113	15f. E-mail Address dharris@ameriform.us

LOCAL GOVERNMENT ACTION & CERTIFICATION

This section must be completed by the clerk of the local governing unit before submitting application to the State Tax Commission. Check items on file at the Local Unit and those included with the submittal.

16. Action taken by local government unit ☐ Abatement Approved for _____ Years (1-12) After Completion ☐ Yes ☐ No ☐ Denied (Include Resolution Denying)	16b. The State Tax Commission Requires the following documents be filed for an administratively complete application: Indicate N/A if Not Applicable ☐ 1. Original Application plus attachments, and one complete copy ☐ 2. Resolution establishing district ☐ 3. Resolution approving/denying application. ☐ 4. Letter of Agreement (Signed by local unit and applicant) ☐ 5. Affidavit of Fees (Signed by local unit and applicant) ☐ 6. Building Permit for real improvements if project has already begun ☐ 7. Equipment List with dates of beginning of installation ☐ 8. Form 3222 (if applicable) ☐ 9. Speculative building resolution and affidavits (if applicable)
16a. Documents Required to be on file with the Local Unit Indicate N/A if Not Applicable ☐ 1. Notice to the public prior to hearing establishing a district. ☐ 2. Notice to taxing authorities of opportunity for a hearing. ☐ 3. List of taxing authorities notified for district and application action. ☐ 4. Lease Agreement showing applicants tax liability.	
17. Name of Local Government Body	18. Date of Resolution Approving/Denying this Application

Attached hereto is an original and one copy of the application and all documents listed in 16b. I also certify that all documents listed in 16a are on file at the local unit for inspection at any time.

19a. Signature of Clerk	19b. Name of Clerk	19c. E-mail Address
19d. Clerk's Mailing Address (Street, City, State, ZIP)	19e. Phone Number	19f. Fax Number

State Tax Commission Rule Number 57: Complete applications approved by the local unit and received by the State Tax Commission by October 31 each year will be acted upon by December 31. Applications received after October 31 may be acted upon in the following year.

Local Unit: Mail one original and one copy of the completed application and all required attachments to:

State Tax Commission
Michigan Department of Treasury
P.O. Box 30471
Lansing, MI 48909-7971

STC USE ONLY			
LUCI Code	Begin Date	End Date	End Date2

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE
*AMERIFORM INC.***

WHEREAS, pursuant to P.A. 198 of 1974 as amended, after duly noticed public hearing held on February 27, 1997, this Commission by resolution established an Industrial Development District as requested by Ameriform Inc., 1790 Sun Dolphin, Muskegon, Michigan 49441; and

WHEREAS, Ameriform Inc. has filed an application for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to a building expansion and new machinery and equipment to be installed within said Industrial Development District ; and

WHEREAS, before acting on said application the Muskegon City Commission held a public hearing on March 28, 2006, at the Muskegon City Hall in Muskegon, Michigan at 5:30 p.m. at which hearing the applicant, the assessor and representatives of the affected taxing units were given written notice and were afforded an opportunity to be heard on said application; and

WHEREAS, the installation of machinery and equipment is calculated to and will have the reasonable likelihood to retain, create, or prevent the loss of employment in Muskegon, Michigan; and

WHEREAS, the aggregate SEV of real property exempt from ad valorem taxes within the City of Muskegon, will not exceed 5% of an amount equal to the sum of the SEV of the unit, plus the SEV of personal and real property thus exempted.

NOW, THEREFORE, BE IT RESOLVED by the Muskegon City Commission of the City of Muskegon, Michigan that:

- 1) The Muskegon City Commission finds and determines that the Certificate considered together with the aggregate amount of certificates previously granted and currently in force under Act No. 198 of the Public Act of 1974 as amended and Act No. 255 of the Public Acts of 1978 as amended shall not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of a taxing unit which levies ad valorem property taxes in the City of Muskegon.
- 2) The application of Ameriform Inc., for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to the building expansion and installation of new machinery and equipment on the following described parcel of real property situated within the City of Muskegon to wit:

(See Attachment #1)

- 3) The Industrial Facilities Tax Exemption Certificate is issued and shall be and remain in force and effect for a period of nine (9) years on personal property and twelve (12) years on real property.

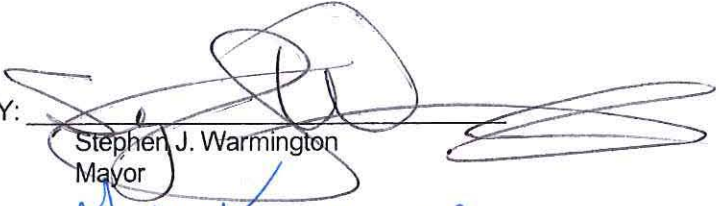
Adopted this 28th Day of March 2006.

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

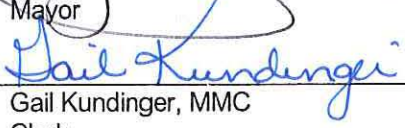
Nays: None

Absent: None

BY: _____

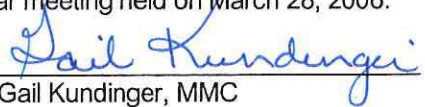

Stephen J. Warmington
Mayor

ATTEST: _____


Gail Kunderger, MMC
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on March 28, 2006.


Gail Kunderger, MMC
Clerk

Attachment # 1
LEGAL DESCRIPTION
K. L. INDUSTRIES, INC.

Parcel 1:

That part of the South 1/2 of the Southwest 1/4 of Section 34, Town 10 N Range 16 West, City of Muskegon, Muskegon County, Michigan, described as follows: Commencing at the South 1/4 corner of said Section, thence South 89°34'26" West along the South line of said Section 1382.00 feet, thence North 0°46'26" East parallel to the North and South 1/4 line of said Section 900.00 feet, thence South 89°34'26" West parallel to the South line of said Section 340.00 feet for POINT OF BEGINNING, thence North 0°46'26" East parallel to said North and South 1/4 line 440.45 feet to the North line of said South 1/2 of the Southwest 1/4, thence South 89°46'13" West along said North line 940.12 feet to the West line of said Section, thence South 1°08'39" West along said West line 7.32 feet to the Northeasterly line of the Michigan State Highway Department Right-Of-Way as described in a Deed recorded in Liber 703, Page 374, thence South 34°43'34" East along said Northeasterly line 528.10 feet, thence North 89°34'26" East 633.50 feet to Point of Beginning.

Parcel 2:

That part of the South 1/2 of the Southwest 1/4 of Section 34, Town 10 North Range 16 West, City of Muskegon, Muskegon County, Michigan, described as follows: Commencing at the South 1/4 corner of said Section, thence North 0°46'26" East along the North and South 1/4 line of said Section 350.00 feet to the North line of Sherman Boulevard, thence South 89°34'26" West parallel to the South line of said Section and along the North line of said Sherman Boulevard 350.00 feet, thence North 0°46'26" East parallel to said North and South 1/4 line 411.78 feet, thence Northerly along the arc of a 200.00 foot radius curve to the left a distance of 19.22 feet (the central angle of said curve is 5°30'20" and the long chord of said curve bears North 1°58'44" West 19.21 feet) to POINT OF BEGINNING, thence Northwesterly along the arc of a 200.00 foot radius curve to the left a distance of 299.13 feet (the central angle of said curve is 85°41'40" and the long chord of said curve bears North 47°34'44" West 272.02 feet), thence South 89°34'26" West 1007.78 feet, thence North 30°12'47" West 67.97 feet, thence South 89°34'26" West 125.00 feet, thence North 0°46'26" East 315.45 feet to the North line of said South 1/2 of the Southwest 1/4, thence North 89°46'13" East along said North line 733.30 feet to the Southerly line of Consumers Power Company property (100.00 feet wide adjacent to 50.00 foot wide Pennsylvania Railroad property), thence South 71°07'50" East along said Southerly line 1039.86 feet to the North and South 1/4 line of said Section, thence South 58°36'41" West 414.43 feet to Point of Beginning. Subject to an Easement for utility purposes vested in the City of Muskegon in Liber 1157, Page 134.

CITY OF MUSKEGON

CONTRACT FOR TAX ABATEMENT

Act 198 Public Acts of 1974

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

Recitals:

- A. The Company has applied to City for the establishment of an industrial development district or industrial rehabilitation district pursuant to the provisions of Act 198 of the Public Acts of 1974, as amended, which act requires a contract between the City and the Company to be agreed and submitted with the Company's subsequent anticipated application for an industrial facilities exemption certificate.
- B. That in addition to the statutory requirement, the City has determined that it is in the best interests of the taxpayers, property owners and residents of the City that this Agreement be approved and executed prior to the establishment of the requested district, and the City deems this Contract, together with the conditions set forth in the said Act to constitute a necessary element in the City's determination whether or not to create the district.
- C. The Company intends to install the project set forth in its application ("project") which it believes qualifies for the process of establishing the district and the application for industrial facilities exemption certificate.
- D. The City, provided this Agreement is executed, will determine whether to create the district based upon the potential for the production of permanent jobs, the continuation, **stabilization** or increase of economic activity, planning and zoning considerations and the City's general plan and intentions regarding economic development. In addition to the City policy considerations and predictions that the Company's proposed district and certificate benefit the community in those ways, the City has further determined that the contractual commitments made by the Company to thereby assist the community shall be binding on the Company and necessary to continue the tax exemption made possible by the certificate.
- E. **This contract shall become effective upon the issuance of an Industrial Facilities Tax Exemption Certificate.**

NOW THEREFORE THE PARTIES AGREE:

1. **COMPANY AGREEMENT.** The Company irrevocably commits to the investment, job retention and job creation promises made in its application, a copy of which is attached hereto and incorporated herein. In particular the Company agrees:
- 1.1 That 100% of the jobs shall be filled and in existence with full-time employees by a date no later than two (2) years from the date of the granting of the certificate by the State Tax Commission, **subject to the provisions of section 3.4 of this agreement.**
 - 1.2 That the amount of jobs listed on the application, whether new or retained, will be maintained through the life of the abatement, **subject to the provisions of section 3.4 of this agreement.**
 - 1.3 The Company shall meet the affirmative action goal included in the application or in any documents supplied by the City and utilized by the Company, including any additional representations made to the City Commission on or before the date two (2) years after the granting of the certificate by the State Tax Commission. It shall maintain the said levels of

employment diversity during the period of the certificate, **subject to the provisions of section 3.4 of this agreement.**

- 1.4 The Company, by the end of two (2) years from the date of the grant of the certificate by the State Tax Commission shall have completed the investment of \$976,013.00 in the equipment and improvements as shown in the application, **subject to the provisions of section 3.4 of this agreement.**
- 1.5 That the improvements and equipment to receive the tax abatement treatment shall be completed on or before the date two (2) years from the date of granting of the certificate by the State Tax Commission.
- 1.6 The Company shall pay its specific taxes required by the act in a timely manner, and shall not delay payments so as to incur any penalties or interest.
- 1.7 The Company shall fully cooperate with the City representatives in supplying all requested and required documentation regarding jobs, investment, the meeting of all goals and the timely installation and utilization of equipment and improvements. The City shall be entitled to inspect at reasonable hours the Company's premises where the said improvements and equipment have been installed and where the said jobs are performed.
- 1.8 The Company shall maintain, during the entire period for which the tax abatement is granted, the level of jobs, affirmative action goals, production and utilization of the improvements and equipment at the site where the district has been created and for which the tax exemption has been granted.
- 1.9 The Company shall not cause or fail to cure the release of any hazardous substance, or the violation of any environmental law on its premises in the City. It shall report any releases to the appropriate governmental authority in a timely and complete manner, and provide copies of said report documentation to the City. It shall comply with all orders and actions of any governmental agency having authority.
- 1.10 The Company shall maintain the equipment and improvements so as to minimize physical or functional obsolescence.
- 1.11 The Company shall continue to operate its business location in the City, containing the same number of and type of jobs, for the term of the certificate.

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

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

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

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

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

3.4 The failure to create or retain jobs, meet affirmative action goals or expend the funds on equipment and improvements as represented in the application within the times required hereby, **unless the company can show that there has been a loss of revenue and employment due to circumstances beyond the control of the company. In order to make that showing the company shall have the burden of supplying, to the City's satisfaction, complete and convincing documentation supporting and justifying reductions in investment, failures to attain affirmative action goals or job losses, such as, without limitation, written evidence of lost contracts, accounting information showing reduced revenues due to the loss of business, (not due to diversion of production to affiliate companies or divisions of the company), production records showing reduced quantities over significant periods of time, and such other information required by the City to support the Company's claim that the failure to invest, failure to achieve affirmative action goals, or loss of jobs should not form the basis for a finding of default.**

3.5 The bankruptcy or insolvency of the Company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

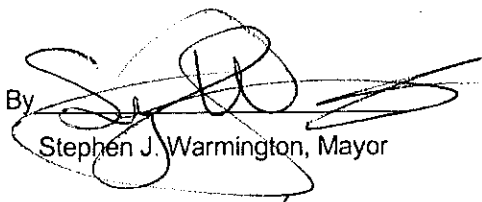
6. Counterparts. This Agreement may be executed in one or more counterparts. Notwithstanding such execution all such counterparts shall constitute one and the same Agreement.

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

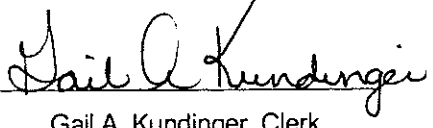
8. Effective Date. This Agreement shall be effective on the date the State of Michigan Tax Commission grants the company at Industrial Facilities Exemption Certificate.

CITY OF MUSKEGON

By


Stephen J. Warmington, Mayor

and


Gail A. Kunderger, Clerk

Ameriform Inc.

By _____

Its _____

and _____

Its _____

DATE: February 21, 2006
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-050103

*Tabled
from 2-28-06*

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **442 W. Muskegon** – is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-050103 – 442 W. Muskegon

Location and ownership: This structure is located on Muskegon between Sixth and Fifth and is owned by Gail Anderson, 845 Catherine, Muskegon, MI 49442.

Staff Correspondence: A dangerous building inspection was conducted on 05/16/05. The Notice and Order to Repair was issued on 06/01/05. On 08/04/05 the HBA tabled case pending an interior inspection. On 10/06/05 the HBA declared structure substandard, dangerous and a public nuisance.

Owner Contact: Mr. & Mrs. Anderson were present at the HBA meeting dated 06/01/05 at which time Mr. Anderson said his plan was to sell the structure "as is" but said he had taken care of the exterior items, the roof and replace siding but work was done without permits. Mr. Anderson agreed to schedule an interior inspection and the case was tabled. Mr. & Mrs. Anderson were present at the HBA meeting 10/06/05 which Mr. Anderson stated again his plan to sell property "as is " but no interior inspection was ever scheduled. The Neighborhood Investment Corp scheduled an interior inspection but it was a "no show". There has been no interior inspection scheduled as promised, however a housing (rental) inspection report conducted 06/01/05 shows 64 items including unsafe electrical, plumbing, rotted steps, etc. (see attached report).

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: 17,600

Estimated cost to repair: \$6,000 (Exterior Only)

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

City Commission Recommendation: The commission will consider this item at it's meeting Tuesday, February 28, 2005.

CITY OF MUSKEGON
933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715
**DANGEROUS BUILDING INSPECTION
REPORT**

Tuesday, February 21, 2006

Enforcement # EN050103 **Property Address** 442 W MUSKEGON AVE
Parcel #24-205-337-0008-00 **Owner** ANDERSON GAIL A

Inspector: Henry Faltinowski

Date completed: 05/16/2005

DEFICIENCIES:

Uncorrected

1. Roof covering on home incomplete.
2. Roof covering on garage failing. Reroof
3. Missing siding on home.
4. Missing rotting siding on garage.
5. Scrape and paint garage - replace broken out windows - replace damage door.

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

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

Henry Faltinowski, Building Inspector

Date

CITY OF MUSKEGON INSPECTION REPORT

June 1, 2005

AT 4:00 p.m.

FOR W. MUSKEGON 442

PAGE 1

No	Cat	Violation
1		BASEMENT Water and gas lines must be properly supported.
2	A	BASEMENT Doesn't have a smoke detector as required by code.
3	A	BASEMENT Restore laundry waste.
4	B	BASEMENT Hose used for water supply.
5	A	BASEMENT Fuse or circuit panel has circuit with too large of fuse for the size of wire.
6	B	BASEMENT - ELECTRIC Fuse has doubled up circuits.
7	A	BASEMENT - FURNACE Furnace needs an inspection by a mechanical contractor and must be certified safe.
8	B	BASEMENT - FURNACE Please have your mechanical contractor fill out the enclosed furnace inspection form. You must return this prior to your next inspection.
9	A	BASEMENT-WATER HTR & OTHER AREAS Copper and galvanized water lines are corroded.
10	A	BATHROOM Lavatory is inoperable.
11		BATHROOM No water to lavatory.
12	A	BATHROOM No waste line on lavatory.
13	B	BATHROOM Ceiling has a hole or holes or large cracks in it.
14	B	BATHROOM Floor covering has holes, rips or is missing or is not sealed on edges.
15	B	BATHROOM Outlet is broken, loose or not working.
16	A	BATHROOM No power.
17	B	BATHROOM Window lock(s) is/are missing or inoperative.
18	B	BATHROOM - TOILET Toilet is not bolted tight at the floor.
19	B	BATHROOM - TUB Faucet is broken or incomplete.
20	A	ELECTRIC Front bedroom, bathroom, and basement are without power.
21		ELECTRIC Service needs to be upgraded.
22		ELECTRIC Entire dwelling needs to be re-wired.
23	A	EXTERIOR - FRONT Window has broken or cracked glass.

CITY OF MUSKEGON INSPECTION REPORT

June 1, 2005

AT 4:00 p.m.

FOR W. MUSKEGON 442

PAGE 2

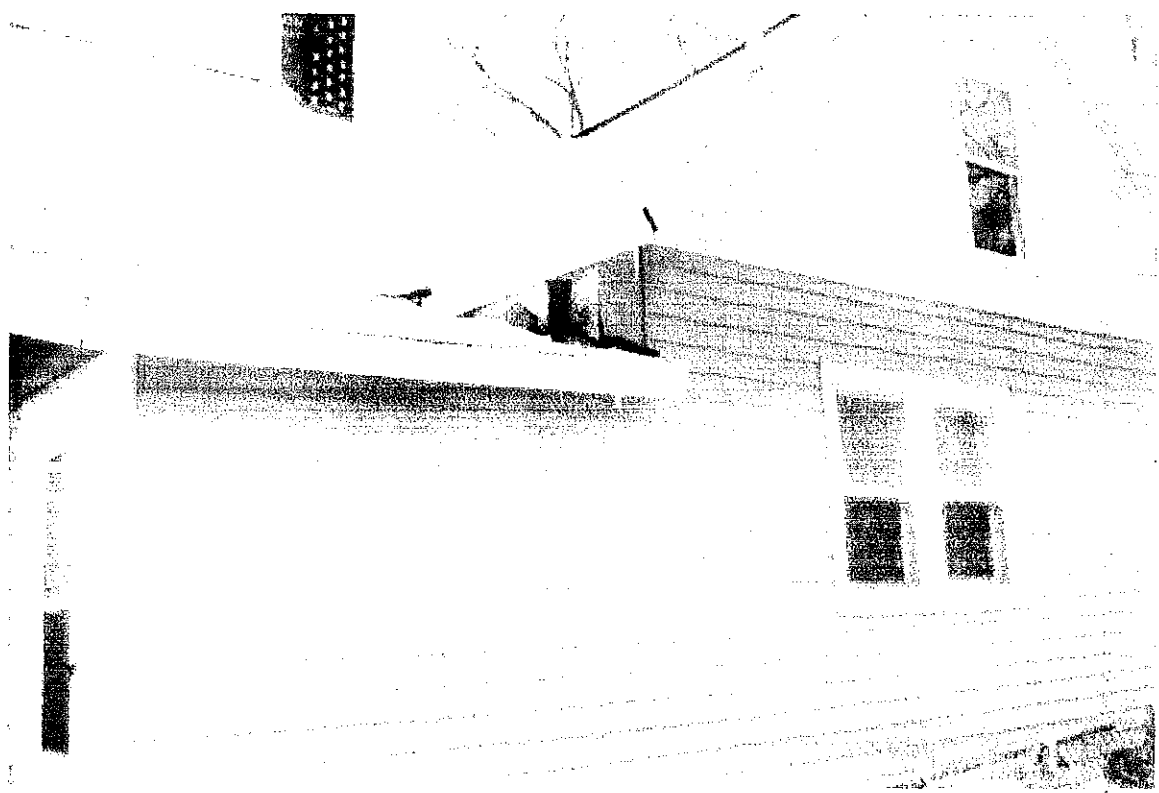
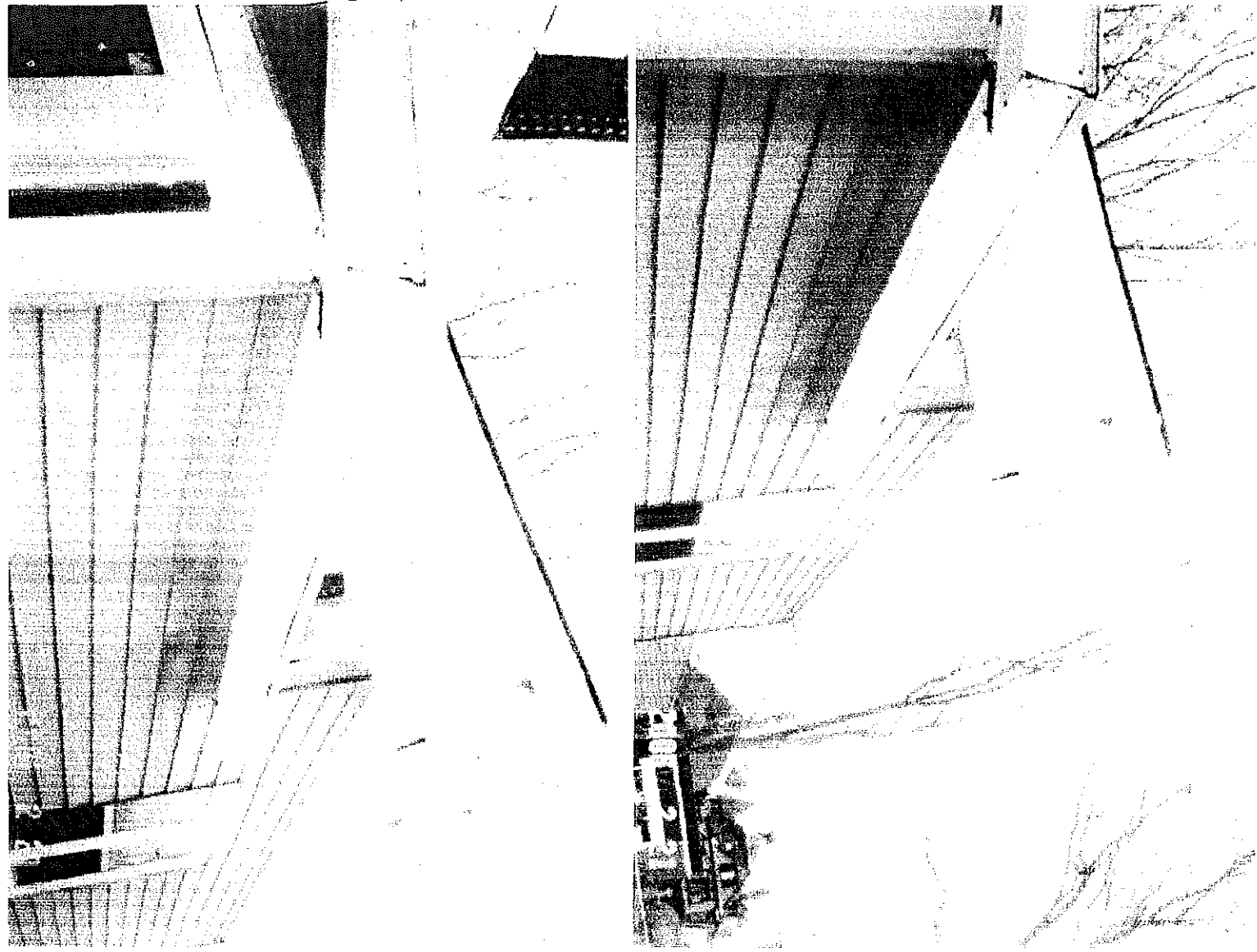
No	Cat	Violation
24	B	EXTERIOR - FRONT PORCH Door has broken or missing panels.
25	A	EXTERIOR - FRONT PORCH Dwelling has flammable liquids stored inside - must be removed.
26	B	EXTERIOR - GENERAL Operable window(s) do not have a screen - must cover the complete bottom sash.
27	B	EXTERIOR - REAR Light fixture is broken or loose.
28	A	EXTERIOR - SEVERAL Window has broken or cracked glass.
29	B	EXTERIOR - SOME TRIM Has peeling paint and is not protected from weather by properly applied water-resistant paint or waterproof finish.
30	B	FRONT BEDROOM Ceiling tile are missing or falling down.
31	B	FRONT BEDROOM Roof leaks.
32	A	FRONT BEDROOM Ceiling is moldy.
33	B	FRONT BEDROOM Window lock(s) is/are missing or inoperative.
34	B	FRONT BEDROOM Room is not supplied with 2 sources of power. Must have 2 duplex wall outlets or outlet and one overhead light.
35	B	FRONT BEDROOM Door is loose or coming off of its hinges.
36		GARAGE NOTE: Garage must be removed or repaired.
37	B	GARAGE Has peeling paint and is not protected from weather by properly applied water-resistant paint or waterproof finish.
38	B	GARAGE Siding has holes in it or is rotted or missing.
39	B	GARAGE Has eave boards that are rotted or missing.
40	A	GARAGE Window sash is broken, rotted or missing.
41	B	GARAGE Window sill is broken, missing or rotted.
42	B	GARAGE - SEVERAL Door is broken or missing.
43	B	HALLWAY Floor covering has holes, rips or is missing or is not sealed

on edges.
 44 B HALLWAY Ceiling tile are missing or falling down.
 45 KITCHEN Floor slopes.
 46 B KITCHEN

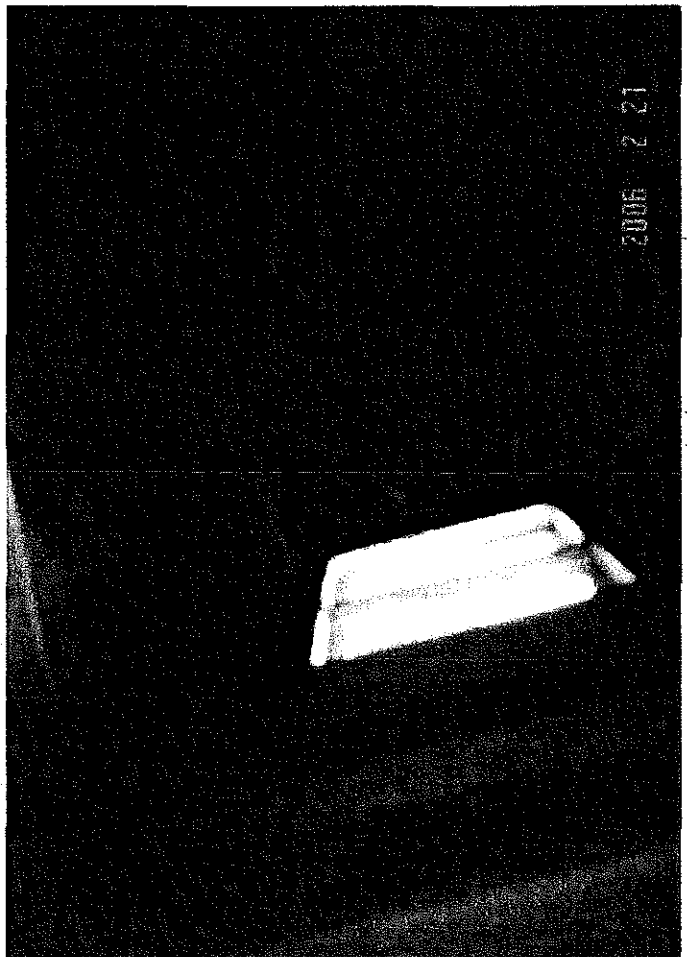
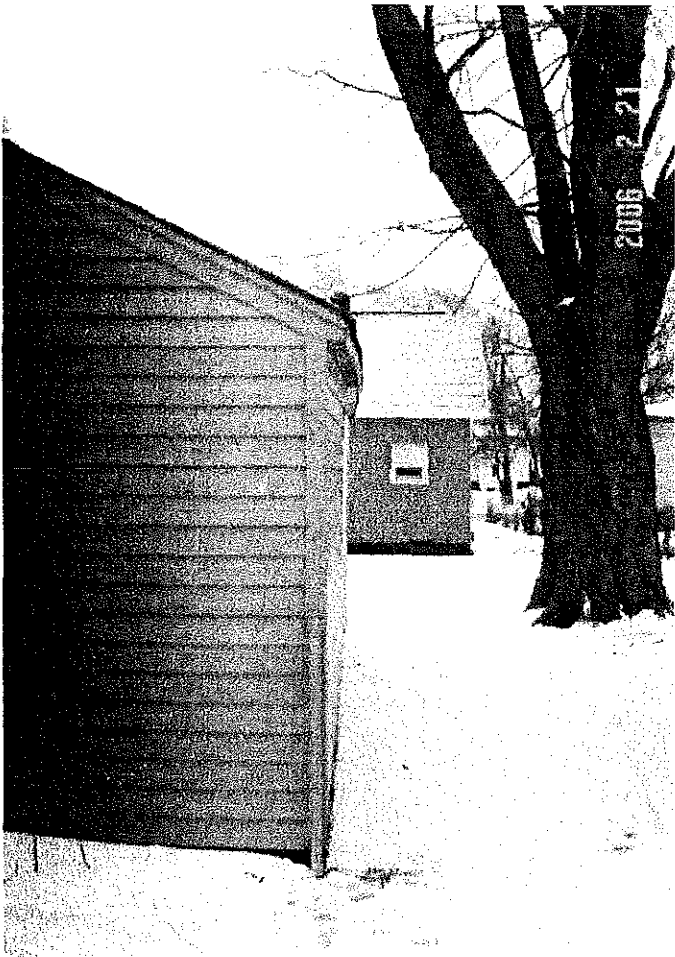
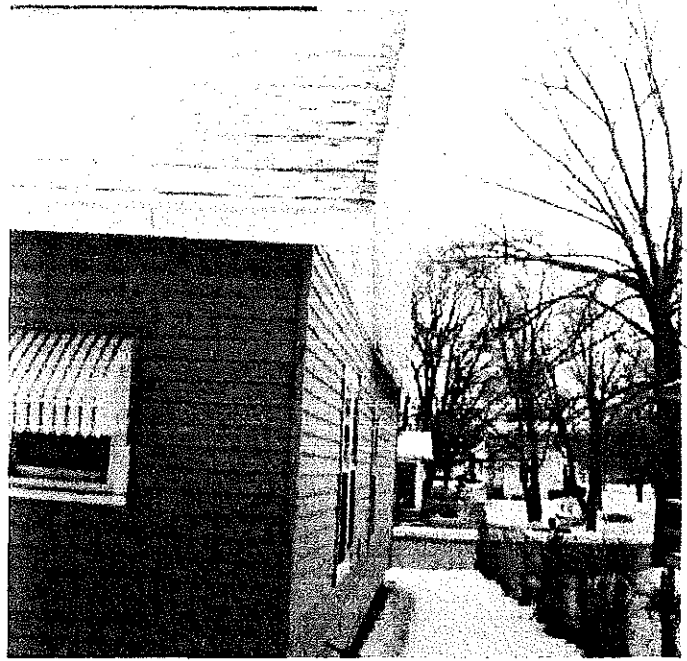
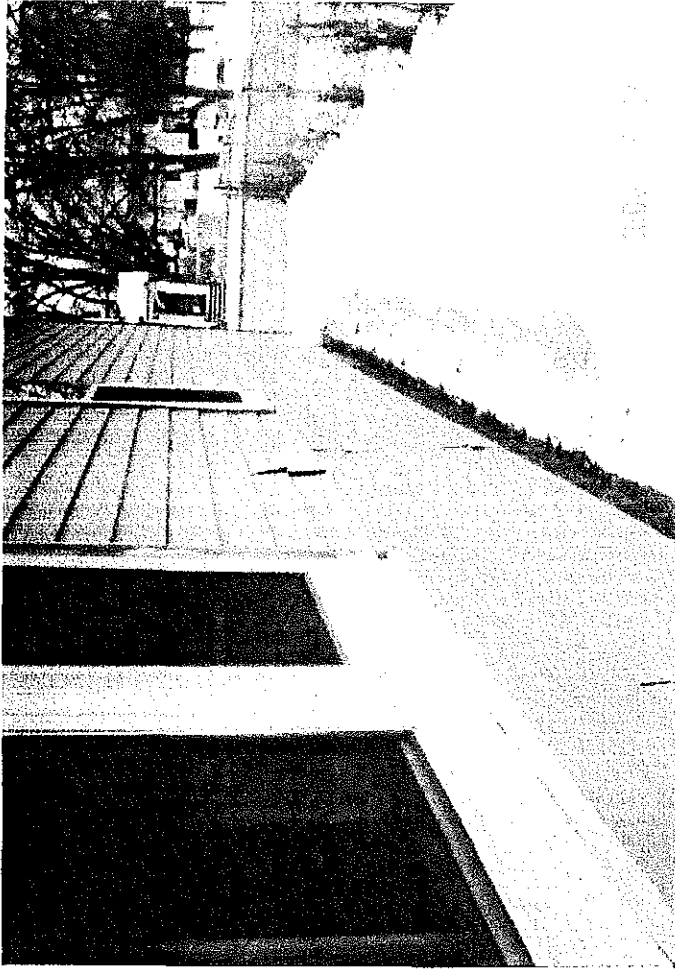
CITY OF MUSKEGON INSPECTION REPORT

June 1, 2005 AT 4:00 p.m. FOR W. MUSKEGON 442 PAGE 3

No	Cat	Violation
47	B	KITCHEN Wall tiles are loose.
48	B	KITCHEN Sink waste needs a compression fitting.
49	B	KITCHEN Window lock(s) is/are missing or inoperative.
50	A	KITCHEN - OVER SINK Cabinets are not in good repair.
51	A	LIVING ROOM Light is improper.
52	A	LIVING ROOM Dwelling has a gasoline engine stored inside - must be removed.
53	B	MIDDLE BEDROOM Doesn't have a smoke detector as required by code.
54	B	MIDDLE BEDROOM Door is broken or missing.
55	A	UPSTAIRS Walls have peeling paint.
56	A	UPSTAIRS Window has broken or cracked glass.
57	B	UPSTAIRS Door has a hasp - MUST BE REMOVED.
58	A	UPSTAIRS Door is broken or missing.
59	A	UPSTAIRS Doesn't have a smoke detector as required by code.
60	A	UPSTAIRS Outlet cover is missing or broken.
61	B	UPSTAIRS Handrail is missing.
62	A	UPSTAIRS Floor covering has holes, rips or is missing or is not sealed on edges.
63	B	UPSTAIRS Step is broken or rotted.
64	B	UPSTAIRS - CEILING Wall or walls has a hole or holes or large cracks in it.
	B	UPSTAIRS - WALLS Ceiling has a hole or holes or large cracks in it.



D. K. Miller - 11/15/2006



4/12/07 - Mrs. Miller - 7/21/2006

Commission Meeting Date: March 28, 2006

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBE*
RE: Request for preliminary Planned Unit Development approval
1050 W. Western Avenue.

SUMMARY OF REQUEST:

The request for preliminary Planned Unit Development (PUD) approval for 1050 W. Western Avenue (Hartshorn Building property) is for a mixed use recreational and commercial development. The request is by John Bultema II, GLM Properties, LLC.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends preliminary approval of the preliminary PUD provided that the conditions listed in the attached resolution are met.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended preliminary approval of the PUD, with the conditions listed on the attached resolution, at their March 16, 2006 meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

Staff Report
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

March 16, 2006

Hearing; Case 2006-06: Request for a Preliminary Planned Unit Development approval for a mixed use recreational and commercial development at 1050 W. Western Avenue (Hartshorn Center) by, John Bultema, GLM Properties, LLC.

BACKGROUND

<u>Applicant:</u>	John Bultema, GLM Properties, LLC
<u>Property Address/Location:</u>	1050 W. Western Avenue
<u>Request:</u>	Preliminary PUD for mixed use recreational and commercial development
<u>Present Land Use:</u>	Commercial and office
<u>Zoning:</u>	B-2, Convenience and Comparison Business, I-General Industrial and LR, Lakefront Recreation

STAFF OBSERVATIONS

1. The subject property is located at 1050 W. Western Avenue, includes the Hartshorn Building, and is 10.6 acres in size.
2. To the east of the property is the City-owned Hartshorn Marina, which is zoned LR. To the west is Michigan Steel, which is zoned I-1, and to the South is the parking lot for the Watermark Building zoned I-1, and another area of I-2 zoning, which includes the former Anaconda building and Cole's Bakery.
3. The property in question presently has 3 different zoning designations, including B-2, Convenience and Comparison Business, which encompasses the largest portion of the property and includes the Hartshorn building. The strip of land located at the rear or northerly portion of the property is zoned LR, Lakefront Recreation, and the portion to the west is zoned I-2, General Industrial.
4. There are presently several commercial and office spaces located inside the Hartshorn Building, including Fricano's, Bob's Bait, the Waterfront Galley, and Hospice administrative offices.
5. The applicant wishes to develop a portion of the property for an RV park for approximately 62 units, and an additional 10 camping sites for tents.
6. The complex would include a swimming pool and playground to be located on the eastern side of the building and a small toilet building, which would be constructed near the

- camping area. There would also be a club house and bath house added to the interior of the Hartshorn Building, near the pool.
7. The applicant also indicates there will be an effort made to connect to the Lakeshore Pathway, once the construction of that section of it takes place. This would afford additional recreational opportunities for visitors using the RV park.
 8. Because of the age of our 1997 Master Land Use Plan, what was then the "Waterfront Center" was identified on the Future Land Use Map as an office use. However, this building previously housed "a variety of specialty, antique and craft shops, and a restaurant" during the 1980s. It has returned to these uses after developed as the Hartshorn Center a few years ago.
 9. Other comments from the Master Plan include: "Restrict industrial expansion to infill locations, internal to existing industrial development." The City has been working for several years to relocate industrial uses away from the shoreline and open the lake to access by the public, as is demonstrated by the Hartshorn Marina.
 10. City departments had the following comments:
 - a. Engineering had no issues with this site plan.
 - b. DPW – Provide detailed utility plans to Kelly DeFrench, along with a water and sewer meter plan.
 - c. Fire – The Fire Marshall has no problems with the concept, but has several issues that would need to be addressed on the final site plan including:
 - i. Hydrant placement shown on prints and complying with International Fire Code.
 - ii. Burn pits and grills must be shown on final site plan.
 - iii. Paved areas shall support weight of Fire Department heaviest apparatus.
 - iv. All gates and barriers must be shown on final plan.
 - v. Adequate turning radius required at end of access driveways.
 11. Staff has received no comments regarding this case.

CITY OF MUSKEGON

RESOLUTION #2006- 32(a)

**RESOLUTION FOR PRELIMINARY PLANNED UNIT DEVELOPMENT APPROVAL FOR
1050 W. WESTERN AVENUE, HARTSHORN CENTER PROPERTY.**

WHEREAS, a petition for a planned unit development was received from John Bultema II, GLM, LLC; and,

WHEREAS, a planned unit development will allow a mixed use recreational and commercial development; and,

WHEREAS, proper notice was given by mail and publication and public hearings were held by the City Planning Commission and by the City Commission to consider said petition, during which all interested persons were given an opportunity to be heard in accordance with provisions of the Zoning Ordinance and State Law; and

WHEREAS, the Planning Commission and staff have recommended approval of the preliminary Planned Unit Development and associated conceptual site plan;

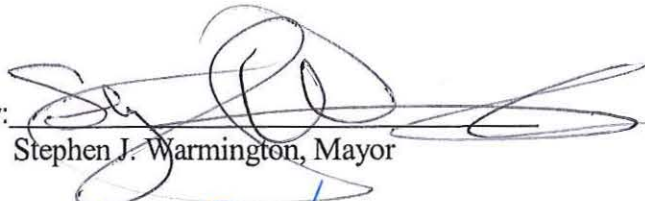
NOW, THEREFORE, BE IT RESOLVED that the recommendation by staff and the City Planning Commission be accepted and the preliminary planned unit development is hereby approved.

Adopted this 28th day of March, 2006

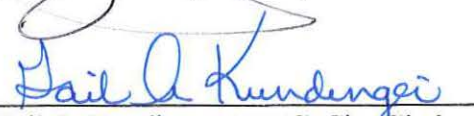
Ayes: Davis, Gawron, Shepherd, Spataro, Warmington, Wierengo, Carter

Nays: None

Absent: None

By: 

Stephen J. Warmington, Mayor

Attest: 

Gail A. Kunding, MMC, City Clerk

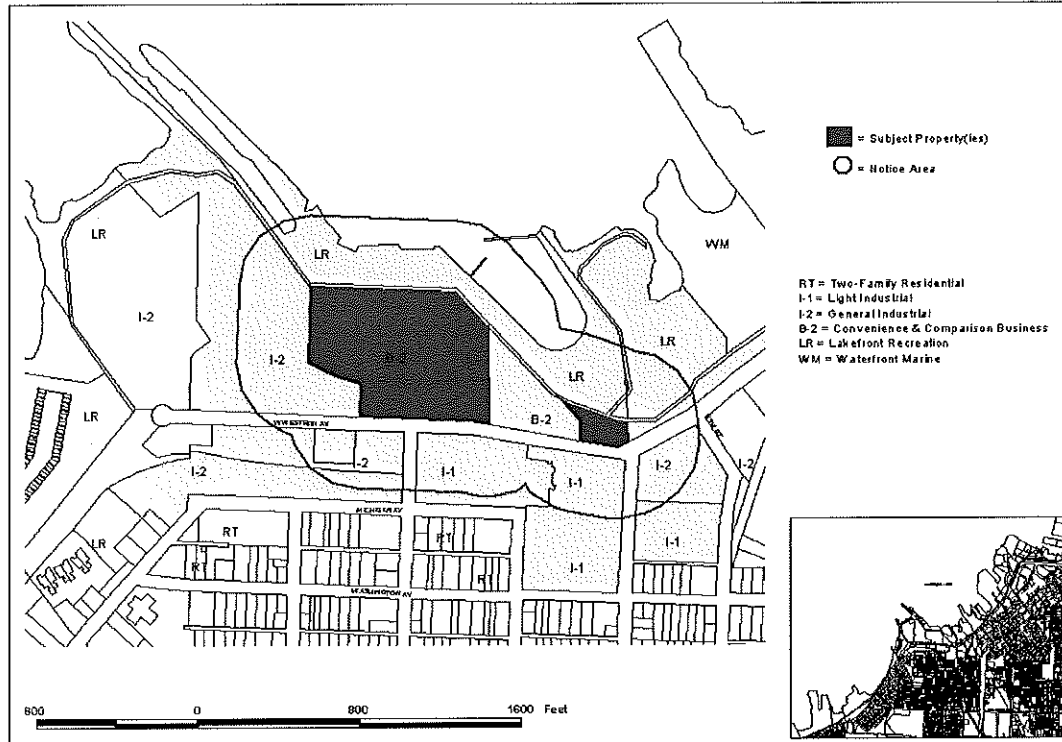
CERTIFICATE (Preliminary PUD for 1050 W. Western Ave., Hartshorn Building.)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: April 4, 2006.

Gail Kunderger
Gail Kunderger, MMC
Clerk, City of Muskegon

**City of Muskegon
Planning Commission
Case # 2006-06**



1050 W. Western Ave. – Front view



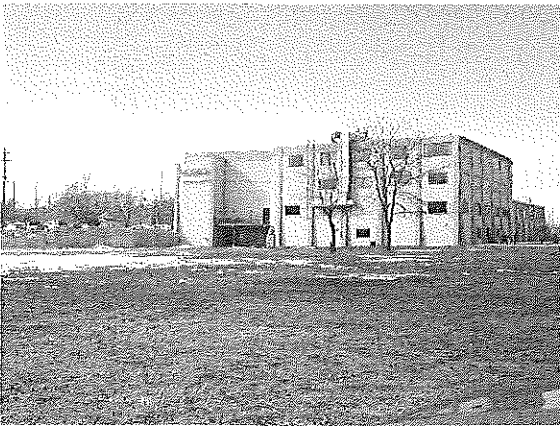
1050 W. Western Ave. – Rear view



Parking lot behind Harnshorn Building.



Property to the rear of the parking area.



East side of Hartshorn Building.



West end of Hartshorn Building.

STAFF RECOMMENDATION

Staff recommends approval of the request for a Preliminary PUD with the understanding that a more detailed site plan will be provided to the Planning Commission for review at the time of submissions of the Final PUD plan.

DELIBERATION

Standards for discretionary uses: (emphasis provided)

1. Give due regard to the nature of all adjacent uses and structures and the consistency with the adjacent use and development.
2. Find that the proposed use or activity would not be offensive, or a nuisance, by reason of increased traffic, noise, vibration, or light.
3. Adequate water and sewer infrastructure exists or will be constructed to service the activity.

4. The proposed site plan complies with section 2331 of the ordinance and has:
 - a. proper ingress and egress
 - b. sufficient parking areas, streets, roads and alleys
 - c. screening walls and/or fences
 - d. adequate fire and police protection
 - e. provisions for disposal of surface water run-off, sanitary sewage
 - f. adequate traffic control and maintenance services
 - g. preserves property values to related or adjoining properties.

MOTION FOR CONSIDERATION

I move that the Preliminary PUD for a mixed-use recreational and commercial development at 1050 W. Western Avenue be (approved/denied) pursuant to the determination of (compliance/lack of compliance) with the intent of the City Zoning Ordinance and City Master Land Use Plan based on the following conditions (only if approved):

1. The applicant must apply to Planning Commission and City Commission for Final PUD approval including review of a complete site plan and landscaping plan for the entire site.

Commission Meeting Date: March 28, 2006

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Rezoning request for properties located at 1438, 1446, 1458, 1468, and 1478 Terrace St.

SUMMARY OF REQUEST:

Request to rezone the properties located at 1438, 1446, 1458, 1468, and 1478 Terrace Street from B-2, Convenience and Comparison Business District to R-1, One Family Residential District.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the request.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 3/16 meeting. The vote was unanimous with J. Aslakson and T. Michalski absent.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2190

An ordinance to amend the zoning map of the City to provide for a zone change for certain properties from B-2 "Convenience and Comparison Business District" to R-1 "One Family Residential District"

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning of the following described property from B-2 "Convenience and Comparison Business District" to R-1 "One Family Residential District":

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 LOT 7 & W 24 1/2 FT LOT 21

And

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 W 120 FT LOT 8

And

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 LOT 9 EX ELY 28 1/2 FT

And

CITY OF MUSKEGON REVISED PLAT OF 1903 WLY 120 FT LOT 10 ALSO COM @
NWLY COR LOT 11 TH E 69 FT 6 IN TH IN A SWLY DIR 6 FT 8 IN TO A PT 7 3/8 IN S OF
N LINE LOT 11 TH NWLY TO P O B BLK 271

And

CITY OF MUSKEGON REVISED PLAT OF 1903 WLY 120 FT LOT 11 EX COM @ NWLY
COR LOT 11 TH E 69FT 6 IN TH IN A SWLY DIR 6 FT 8 IN TO A PT 7 3/8 IN S OF N LINE
LOT 11 TH NWLY TO P O B BLK 271

This ordinance adopted:

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

Nays: None

Adoption Date: March 28, 2006

Effective Date: April 13, 2006

First Reading: March 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kunding
Gail A. Kunding, MMC
Clerk

CERTIFICATE

(Rezoning of 1438, 1446, 1458, 1468, and 1478 Terrace Street B-2 to R-1)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: March 29, 2006.

Gail A. Kunderger
Gail A. Kunderger, MMC
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on March 28, 2006, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning of the following properties from B-2 "Convenience and Comparison Business District" to R-1 "One Family Residential District":

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 LOT 7 & W 24 1/2 FT LOT 21

And

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 W 120 FT LOT 8

And

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 271 LOT 9 EX ELY 28 1/2 FT

And

CITY OF MUSKEGON REVISED PLAT OF 1903 WLY 120 FT LOT 10 ALSO COM @
NWLY COR LOT 11 TH E 69 FT 6 IN TH IN A SWLY DIR 6 FT 8 IN TO A PT 7 3/8 IN S OF
N LINE LOT 11 TH NWLY TO P O B BLK 271

And

CITY OF MUSKEGON REVISED PLAT OF 1903 WLY 120 FT LOT 11 EX COM @ NWLY
COR LOT 11 TH E 69 FT 6 IN TH IN A SWLY DIR 6 FT 8 IN TO A PT 7 3/8 IN S OF N LINE
LOT 11 TH NWLY TO P O B BLK 271

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

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

Published April 3, 2006

CITY OF MUSKEGON

By _____
Gail A. Kunding, MMC
City Clerk

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

Account No. 101-80400-5354

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

March 16, 2006

Hearing; Case 2006-07: Staff initiated request to rezone the properties at 1438, 1446, 1458, 1468 and 1478 Terrace Street, from B-2, Convenience and Comparison Business, to R-1, One Family Residential.

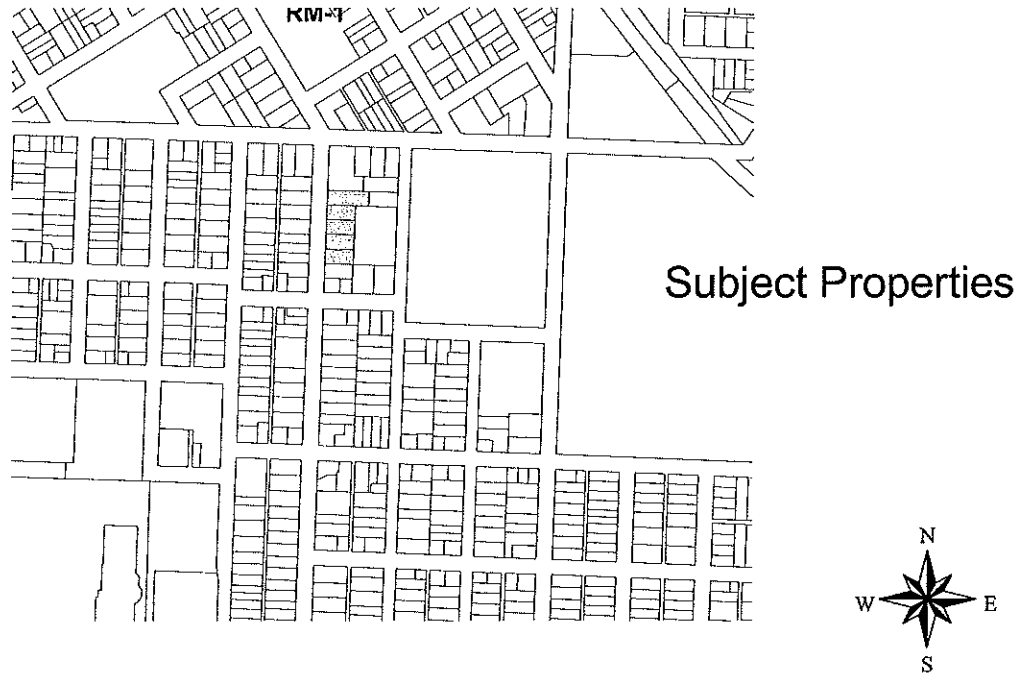
BACKGROUND

<u>Applicant:</u>	City of Muskegon
<u>Property Address/Location:</u>	1438, 1446, 1458, 1468, and 1478 Terrace Street
<u>Request:</u>	Rezone from B-2, Convenience and Comparison Business to R-1, One Family Residential
<u>Present Land Use:</u>	Residential
<u>Zoning:</u>	B-2, Convenience and Comparison Business

STAFF OBSERVATIONS

1. The properties in question are located on Terrace Street in an area presently the focus of the latest Blight Fight effort by the City of Muskegon. The area is referred to as "Area 13" (see enclosed color map).
2. The four houses are all appear to be single family homes. The property at 1446 Terrace is a vacant lot owned by the Vineyard Christian Fellowship Church located at 1428 Terrace, at the corner of Terrace and Irwin.
3. Properties directly across Terrace Street are zoned R-1, as are properties directly to the south along Terrace Street. To the east, behind these homes is Muskegon Floral, which is zoned B-2 and should remain as it is.
4. The 1997 Master Land Use Plan, in reference to this sub-area, states: "Maintain the sub-area's residential focus".
5. The Master Plan's Future Land Use Map shows this area as residential.
6. Other areas in Area 13 may be brought to Planning Commission for rezoning in the future, particularly some sections of Peck Street.
7. Staff has received no comments regarding this request.

**City of Muskegon
Planning Commission
Case # 2006-07**

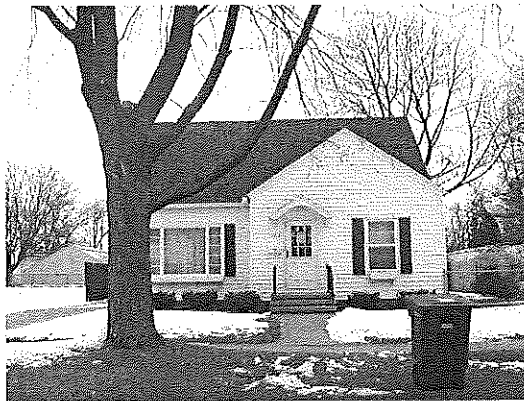




1438 Terrace Street



1446 Terrace Street



1458 Terrace Street



1468 Terrace Street



1478 Terrace Street

RECOMMENDATION

Staff recommends approval of the request to rezone the subject properties from B-2 to R-1 because the request conforms to the goals and recommendation of the City's 1997 Master Plan Plan.

DELIBERATION

Criteria-based questions typically asked during a rezoning include:

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

DETERMINATION

The following motion is offered for consideration:

I move that the request to rezone the property located at 1438, 1446, 1458, 1468, and 1478 Terrace Street from B-2, Convenience and Comparison Business district

to R-1, One Family Residential district, as described in the public notice, be recommended for (**approval/denial**) to the City Commission pursuant to the City of Muskegon Zoning Ordinance, and the determination of (**compliance/lack of compliance**) with the intent of the City Master Land Use/Downtown Lakeshore Redevelopment Plan and zoning district intent.



cc Bryon,
" Planning

March 13, 2006

City of Muskegon
Planning Commission
933 Terrace St.
Muskegon, MI 49443

RE: Rezoning Request
1438,1446,1458,1468 and 1478 Terrace

To Whom It May Concern

While I am not a property owner of the affected properties. I am a City property owner who has been affected by zoning changes and would like to express my views.

I am the owner of 491 Houston, Muskegon. Several years ago, my commercial property was negatively impacted by a zoning change from business to residential.

At the time, I was informed by the Planning Commission, that this zoning change would have no affect on my property and business plans. However in reality, I was later informed that I would not be allowed to open a retail sections for display of my products to customers. I would be allowed to continue to use my property only as a warehouse and not for retail display as was my intentions. Due to this action by the Planning Commission and my inability to effectively communicate with them, I decided to move my retail business to a location outside of the City of Muskegon. I still use the warehouse, but not in the manner in which I intended.

Unfortunately, this is not a rare occurrence. I am aware of other property owners that have been negatively affected by zoning changes and the results have been negative toward the growth of businesses in the City.

As a result of my experiences, I wanted to express my views on how a zoning change has affected me personally and has resulted in a negative business attitude toward the City of Muskegon.

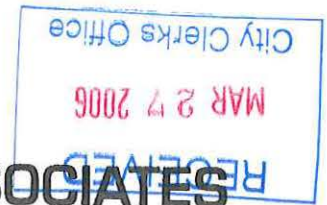
Sincerely

A handwritten signature in dark ink, appearing to read "Kevin Carlson".

Kevin Carlson
491 Houston



cc Bryan
Planning



ROGER NIELSEN & ASSOCIATES

420 Carmen Drive
Spring Lake, MI 49456

PHONE:
(616) 842-7584

March 27, 2006

City of Muskegon
City Commission
933 Terrace St.
Muskegon, MI 49443

RE: Case 2006-07
Request to rezone 1438, 1446, 1458, 1468 and 1478 Terrace

Dear Mr. Mayor and City Commissioners

Regarding the rezoning request, I wish again to go on record opposing the change in zoning from B-2 to R-1 for this group of parcels.

As demonstrated by the enclosed petitions, as previously presented to the Planning Commission, a substantial number of individuals affected by the proposed change have stated that they are in opposition to any change in zoning for these parcels.

This proposed change in zoning will have a negative impact on several multi-family residential units and small businesses in the local area.

From appearances, this zoning change will be to the benefit of only 2 of the effected parcels. The majority of the property owners of the included parcels will suffer a significant negative impact by this change.

It is unfortunate that the Planning Commission was unable to assist the party requesting the zoning change without harming the owners of other properties included in the request by the Planning Commission without any consultation with the owners.

Again, as I see no positive benefit to the proposed zoning change, I once again wish to voice my opposition to any change.

Sincerely


Roger Nielsen

Commission Meeting Date: March 28, 2005

*Needs
2nd Reading*

Date: March 17, 2006
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
**RE: Zoning Ordinance Amendment to Article XXII,
Nonconforming Uses**

SUMMARY OF REQUEST:

Request to amend Sections 2200, 2201, 2202, 2203, and 2204 (Nonconforming Uses) of Article XXII of the Zoning Ordinance

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of Article XXII (Nonconforming Uses) of the Zoning Ordinance.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the amendment at their 3/16 meeting. The vote was unanimous in favor of the amendment, with J. Aslakson and T. Michalski absent.

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

March 16, 2006

OLD BUSINESS

Hearing; Case 2005-41: Staff initiated request to amend Sections 2200, 2201, 2202, 2203, and 2204 (Nonconforming Uses) of Article XXII of the Zoning Ordinance.

BACKGROUND

This section of the ordinance has been a bone of contention in the past regarding some of its restrictions. The Nonconforming Uses language as it presently exists in the Zoning Ordinance is somewhat confusing and hard to interpret. Staff has spent several months reviewing other ordinances and consulting with the City Attorney and other planners regarding a makeover of the section. It has been “a work in progress”, since I have had input from so many sources, including Commissioners Davis and Gawron, who at the Mayor’s request met with staff on several occasions to discuss concerns with the present ordinance language. Much of the original language from our ordinance has been incorporated into the new language. I have attempted to put the proposed section in the usual format with ~~strike-throughs~~ for deleted language and **bold** for new language. I have also included a copy of the current ordinance language.

I first looked at Section 2200: Intent. Staff felt that it needed rewording and clarification. I believe the new language better describes the intention and “spirit” of the Master Plan to have conformity in our City. While allowing the present nonconforming uses and structures to exist while practical, it would also gradually eliminate them. The very existence of a Master Plan by the citizens of the City of Muskegon says loud and clear that they would like their community developed with a plan in mind and not continue the nonconforming uses and structures forever.

One of the first changes you may notice is nonconforming lots, uses of land, and structures are now separated into their own sections. I believe this will make reading and interpreting of the section much easier. Nonconforming lots were not previously addressed. In the past, zoning staff was applying these conditions when determining if a lot was conforming or “buildable”, but there was no written language that supported this in the ordinance. So I completely reconstructed Section 2201 to address Nonconforming Lots only, with all new language. Some portions of Section 2201 have been incorporated into Section 2202.

One area of the ordinance that has raised many questions was regarding Section 2202: Elimination of Nonconforming Uses. There seems to be many opinions on what length of time a nonconforming use should be allowed to continue once the use has ceased. Our present ordinance allowed up to two years. Some other municipal ordinances only allowed six months, but the most common was a one-year time frame. Our ordinance is the most liberal with its time of two years (current language Section 2202, #1). After discussion with other staff members, I left the two-year time period in the revised language (Section 2202, #5, new language), but it may be worth considering shortening the

time period. Number 3 (a-d) in this section gives Planning Commission some guidelines on which to base their decision regarding expansion of nonconforming uses of land. Number 5 would give guidelines to determine if a nonconforming use had been abandoned.

Another problem section of the ordinance that has raised many concerns has been Section 2203, #2 (current ordinance). It referred to a structure that was "damaged by fire, wind, civil disobedience, or an Act of God or the public enemy". The language refers to the fact that those buildings may be repaired or rebuilt so long as "such structural alteration or structural repairs shall not exceed fifty (50) percent of the replacement cost of such building". Upon researching other ordinances in the West Michigan areas, as well as other parts of the state, staff found that some other ordinances allowed structures to be rebuilt that were 60% destroyed. This has been incorporated for your review into the revised section (Section 2203, #6, new language). Much of this section is ordinance language that was contained in our current ordinance, but pertains to structures, and so put into the Nonconforming Structures section.

Hopefully, after discussion, debate and probably some revisions on staff's part, we will come out of the process with a newly revised section that is much more understandable by the public, Planning Commissioner, ZBA members, and staff, but retain the "spirit" of the Master Plan.

The revisions discussed at the January meeting were incorporated into the language. Staff didn't remove Section 2202 #6, as former Commissioner Johnson suggested, because there was no clear direction from the remaining Planning Commissioners to do so. I still believe leaving it in makes sense and allows some latitude, as long as the use is moving closer to conformity.

J. Aslakson made a request of staff to inquire if it would be possible for residential structures only to be rebuilt in the former footprint if the home was destroyed. Staff asked for an opinion from the City Attorney's office. The e-mail from Adam Zuwerink of Parmenter O'Toole is included with this packet. No other changes were requested, so staff left the proposed ordinance as it was. Another copy is included.

NEW LANGUAGE

See separate documents included with this packet.

DELIBERATION

I move that the amendments to Sections 2200, 2201, 2202, 2203, and 2204, Article XXII (Nonconforming Uses), of the Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Sections 2200, 2201, 2202, 2203, and 2204 of Article XXII (Nonconforming Uses) of the Zoning Ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2200, 2201, 2202, and 2203 of Article XXII (Nonconforming Uses) of the City of Muskegon Zoning Ordinance is hereby amended as written below:

ARTICLE XXII – NONCONFORMING LOTS, USES, AND STRUCTURES

SECTION 2200: INTENT

Upon the adoption of this Ordinance or future amendments, there may exist lots, structures, and uses of land and structures which were lawful prior to the adoption of the Zoning Ordinance, or amendment to the Ordinance, but which are not in conformance with the provisions of this Ordinance, or any amendments. It is the intent of this Ordinance to permit these nonconforming lots, structures and uses to continue until they are removed, but not to encourage their survival. Because nonconforming lots, structures and uses, so long as they exist, prevent the full achievement of the goals and objectives of the City of Muskegon Master Plan, the spirit of this Ordinance is to reduce, rather than increase, any nonconformance.

SECTION 2201: NONCONFORMING LOTS

When an existing nonconforming lot does not adjoin any other lot or lots under common ownership or if the nonconforming lot fails to meet the requirements for minimum lot area, minimum width, or both, of the zoning district in which it is located, such lot may be used for the permitted uses of the zoning district under the following conditions:

1. It must meet the definition of “Lot of Record” listed in the definitions of this Ordinance.
2. Structures on a nonconforming lot must still meet setback requirements of its zoning district and is subject to limitations provided by other provisions of this Ordinance.

In any zoning district, where two or more adjoining nonconforming lots are under common ownership or control, these lots shall be combined and considered as one lot for the purposes of this ordinance.

SECTION 2202: NONCONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made unlawful under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. Special land uses and use variances permitted by this ordinance shall not be deemed nonconforming uses.
2. Changes of tenancy, ownership or management of any existing nonconforming uses of land may be made, provided that there is no change in the nature or character of the nonconforming use.
3. No nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, except when authorized by the Planning Commission, after Public Hearing as required for Special Uses and site plans, and upon reaching a determination that the proposed enlargement, increase, or greater area:
 - a. Does not have a substantial detrimental effect on the use and enjoyment of adjacent uses or lots.
 - b. Complies with all parking, sign, or other applicable regulations applicable to accessory uses for the area affected by the proposed enlargement, increase, or greater area.
 - c. Complies with any reasonable conditions imposed by the Planning Commission that are necessary to ensure that the proposed enlargement, increase, or greater area will not prove detrimental to adjacent properties, the neighborhood, or the community.
 - d. It is not larger than twenty five percent (25%) of the original nonconforming area.
4. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
5. A nonconforming use of land which has ceased for a period exceeding twenty-four (24) months or has been changed to a conforming use may not again be devoted to a nonconforming use. A nonconforming use shall be determined to be abandoned if one (1) or more of the following conditions exists, and which shall be deemed to constitute an intent on the part of the property owner to abandon the nonconforming use;
 - a. Utilities, such as water, gas, and electricity to the property, have been discontinued.
 - b. The property, buildings and grounds have fallen into disrepair.
 - c. Signs or other indications of the existence of the nonconforming use have been removed.
 - d. Removal of equipment or fixtures which are necessary for the operation of the nonconforming use.

- e. Other actions, which in the opinion of the Zoning Administrator, constitute an act or omission on the part of the property owner or lessee constituting an intent to abandon the nonconforming use.
6. When such nonconforming use is made more conforming than the use which previously existed, it may continue even though it does not totally conform to all provisions of this Ordinance.

SECTION 2203: NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area lot coverage, height, yards, parking or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No structure may be enlarged or altered in a way which increases its nonconformity, except when authorized by the Planning Commission, after Public Hearing as required for Special Uses and site plans. The Planning Commission shall be authorized to determine the amount of enlargement of any building or structure, consistent with the intent of this article. The nonconforming structure may be changed to an extent not exceeding thirty percent (30%) of the total floor area of the existing building at the time of enactment of the Ordinance from which this chapter is derived, or at the time of its amendment making a structure nonconforming.
2. No nonconforming building or structure shall be moved in whole or part to any other location unless such building or structure and the off-street parking spaces, yard and other open spaces provided, are made to conform to all the regulations of the district in which such building or structure is to be located.
3. Changes of tenancy, ownership or management of any existing nonconforming structures may be made, provided that there is no change in the nature or character of the nonconforming structure.
4. Repair and maintenance work may be performed as required to keep a nonconforming building or structure in a sound condition.
5. In the event any nonconforming building or structure is damaged by fire, wind, civil disobedience, or an Act Of God or the public enemy, it may be rebuilt or restored, provided the cost of such structural alteration or structural repairs shall not exceed seventy-five (75) percent of it's replacement cost. The buildings or structures shall be built in conformance with the requirement of the zoning district in which they are located.
6. Once any nonconforming structure is removed from the property, its nonconforming status has expired and it may not be replaced on the property.

SECTION 2204: [RESERVED]

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Gail A. Kunding, MMC,
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of March, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2006.

Gail A. Kunding, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2200, 2201, 2202, 2203, and 2204 of Article XXII (Nonconforming Uses).

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

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

Published _____, 2006

CITY OF MUSKEGON

By _____
Gail A. Kunding, MMC
City Clerk

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

Account No. 101-80400-5354

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Consideration of Bids
Nims Street Tank Painting (W-651)

SUMMARY OF REQUEST:

We received three bids for the painting contract (W-651) for the Nims Street Tank, the two lowest bidder, M. K. Painting and G & M painting, failed to submit the Non-Collusion Affidavit as required by the contract, the third bidder, Horizon Brothers, committed a mathematical error (submitted a bid of \$440,200 which should have been \$441,200).

While staff is not recommending acceptance of any of those bids, due to the irregularities. we are however, recommending that M.K. painting be awarded the contract, since they were the lowest bidder with a bid price of \$409,700, should the commissioners desire to waive those irregularities.

FINANCIAL IMPACT:

The construction cost of \$409,700.00 plus associated engineering costs.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

If irregularities are waived, award the contract to M. K. Painting

COMMITTEE RECOMMENDATION:

**W651 – NIMS STREET TANK PAINTING
BID TABULATION 03/21/06**

		CONTRACTOR ADDRESS CITY/ST/ZIP	M.K. PAINTING 4157 SEVENTH ST. WYANDOTTE, MI 48192	HORIZON BROS. PAINTING CORP. 1053 KENDRA LANE HOWELL, MI 48843	G&M PAINTING ENT. INC. 18902 QUARRY RD. RIVERVIEW, MI 48192
1	CONCRETE REPAIRS		\$ 3,500.00	\$ 5,000.00	\$ 6,000.00
2	WELD CATHODIC CAPS		\$ 1,500.00	\$ 2,000.00	\$ 11,000.00
3	CAGE MODIFICATION		\$ 1,000.00	\$ 3,000.00	\$ 6,000.00
4	RADIAL ARM SEAM SEALING		\$ 5,000.00	\$ 40,000.00	\$ 13,000.00
5	EXTERIOR REPAINT (CONTAINMENT)		\$ 352,000.00	\$ 340,000.00	\$ 293,000.00
6	PIT PIPING REPAINT		\$ 6,500.00	\$ 8,000.00	\$ 36,000.00
7	CATHODIC PROTECTION INSTALLATION		\$ 13,000.00	\$ 16,000.00	\$ 26,000.00
8	EXPOSURE ASSESSMENT (COST ALLOWANCE)		\$ 1,200.00	\$ 1,200.00	\$ 1,200.00
9	ELECTRICAL RELOCATION (COST ALLOWANCE) to CONSUMER ENERGY		\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
10	CONTROL MODIFICATIONS (COST ALLOWANCE), CITY'S ELECTRICAL CONT.		\$11,000.00	\$ 11,000.00	\$ 11,000.00
		TOTAL	\$409,700.00	\$441,200.00	\$418,200.00



16240 National Parkway * Lansing, MI 48906 * Phone (517) 321-1692 * Fax (517) 321-4405

March 21, 2006

Mohammed Al-Shatel, PE
City of Muskegon
933 Terrace Street
Muskegon, MI 49443-0536

RE: Notice of Award and Agreement

We have reviewed the bids (3) for the painting of the 1,000,000-gallon Nims Street tank. We recommend award of the project to M.K. Painting, Inc, the apparent low bidder, with his bid of \$409,700. M.K. Painting, Inc. is on our prequalified list of tank painting contractors. We have enclosed the bid tabs for your review.

MK Painting did not provide the affidavit of non collusion nor did G & M Painting. Neither of these bidders provided a list of subcontractors. Horizon Brothers provided the non collusion affidavit, but had no subcontractors listed on their form. Horizon Brothers total listed on their bid was for \$440,200. This has been corrected in the bid tab at \$441,200.

Notice of award and contract documents will be prepared for signature. The Owner will execute the Contract Agreement after receiving and reviewing the required bonds and insurance certificate. NTEC will compile and prepare the fully executed Contract Document package for each party at the appropriate time.

Respectfully,

A handwritten signature in black ink, appearing to read "Keith A. Nelson".

Keith A. Nelson, PE
President

Encl: Bid Tab

- 517 719 9454 Keith cell number
- John, MK, 313 999 8367 Betc

Date: March 28, 2006
To: Honorable Mayor and City Commissioners
From: Engineering
RE: **MUSKEGON AREA INTERMEDIATE SCHOOL DISTRICT
ENCROACHMENT AGREEMENTS**

SUMMARY OF REQUEST:

The Muskegon Area intermediate School District has requested approval at the staff level for encroachment agreements needed to install future pole placements and directional bores within the right of way at various locations throughout the City.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval

COMMITTEE RECOMMENDATION:



MAISD

(Muskegon Area Intermediate School District)

30 Harvey Street ♦ Muskegon, Michigan 49442-2398 ♦ Phone 231-777-2637 ♦ Fax 231.773.1028 ♦ www.muskegon-isd.k12.mi.us

March 22, 2006

City of Muskegon Commission
933 Terrace
Muskegon, MI 49443

Dear Commissioners;

This letter is to request staff level approval on future pole placements and directional boring permits within the City of Muskegon limits with regard to the Shoreline Fiber Network.

Sincerely,

Susan W. Meston, Ph.D.
Superintendent

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: March 21, 2006

RE: Terrace Lots Request For Proposals

SUMMARY OF REQUEST:

To authorize City staff to solicit proposals for the construction of the new central fire station, the development of the remainder of the Terrace lots and the redevelopment of the current central fire station.

FINANCIAL IMPACT:

Development on the Terrace lots and redevelopment of the current fire station will add to the City's tax base.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the request.

COMMITTEE RECOMMENDATION:

None.

AGENDA ITEM _____
CITY COMMISSION MEETING 3/27/06

TO: Mayor and City Commission

FROM: Lee Slaughter, Assistant City Manager
Mohammed Al-Shatel, City Engineer

DATE: March 22, 2006

RE: METRO (Metropolitan Extension Telecommunications Rights-of-Way Oversight) Act Request – Application from Arialink Telecom, LLC to construct a broadband Fiber Optic in the City of Muskegon for business and residential property owners.

SUMMARY OF REQUEST

Authorize the Mayor to sign the permit application submitted by Arialink Telecom, LLC. Submittal of the permit application is in response to the City opting into the state's METRO Act. It is requested that approval be conditioned upon verification of satisfactory review of all required documentation that are supposed to accompany the request.

FINANCIAL IMPACT

None.

BUDGET ACTION REQUIRED

None.

STAFF RECOMMENDATION

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

COMMITTEE RECOMMENDATION

None.

MEMORANDUM

To: Mayor and City Commissioners
From: Lee J. Slaughter, Assistant City Manager
Date: March 22, 2006
Re: METRO Act Request from Arialink Telecom, LLC

This item is a normal request to participating municipalities from telecommunication companies for permission to construct telecommunication facilities in the public right-of-way. In November 2002, the Muskegon City Commission passed a resolution approving compliance with the Metropolitan Extension Telecommunications Right-of-way Oversight Act.

The request from Arialink Telecom, LLC is to construct a broadband fiber optic in the City of Muskegon for business and residential property owners. Requesting entities/businesses are supposed to submit necessary and required supporting documentation to municipalities to facilitate processing their request. Municipalities are required to give formal response within 45-days of receipt of the application request. Failure to formally respond can result in a \$40,000 fine.

The 45th-day by which to process this request is April 8, 2006. The next Commission meeting date is April 11th. Arialink has partially provided necessary supporting documentation. Outstanding items are as follows:

- Identify the City as additional Insure
- Provide Certificate of Good Standing
- Provide Method/procedure by which the City might identify facilities.

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

Please feel free to contact me if you have questions.

Thank you.

METRO Act Permit Application Form

CITY OF MUSKEGON
Name of Local Unit of Government

APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS
UNDER
METROPOLITAN EXTENSION TELECOMMUNICATIONS
RIGHTS-OF-WAY OVERSIGHT ACT
2002 PA 48
MCLA SECTIONS 484.3101 TO 484.3120

BY

Arialink Telecom, LLC
("APPLICANT")

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Communications Division of the Michigan Public Service Commission at 517-241-6210 or via its web site at <http://www.mich.gov/mpsc/0.1607.7-159-16372.22707---.00.html>.

45 Days to Act--Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3). The Michigan Public Service Commission can impose fines of up to \$40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

-- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at [insert address].

3209 W. Michigan Ave Lansing, MI 48917

RECEIVED

APR 2 2003

COMMUNICATIONS DIVISION

CITY OF MUSKEGON
Name of local unit of government

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

By
Arialink Telecom, LLC
("APPLICANT")

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

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

1 GENERAL INFORMATION:

1.1 Date: January 19, 2006

1.2 Applicant's legal name: Arialink Telecom, LLC
Mailing Address: 1223 Turner St.
Suite A
Lansing, Mi 48906

Telephone Number: 517-492-1350

Fax Number: 517-492-1398

Corporate website: www.arialink.com

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

Jason Schreiber, Manager

Mailing Address: Same as above

Telephone Number: _____
Fax Number: _____
E-mail Address: _____

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

- ____ Corporation
____ General Partnership
____ Limited Partnership
X Limited Liability Company
____ Individual
____ Other, please describe: _____

1.4 Assumed name for doing business, if any: Arialink Broadband LLC

1.5 Description of Entity:

1.5.1 Jurisdiction of incorporation/formation;

Incorporated in the State of Michigan

1.5.2 Date of incorporation/formation;

Date Incorporated 10-28-2004

1.5.3 If a subsidiary, name of ultimate parent company;

Control Room Technologies, LLC as Sole Member

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

Jason Schreiber, Manager and Resident Agent

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

1.7 Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: None

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

Circle: Yes (NO)

If "yes," please describe the circumstances.

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

1.9.1 A felony; or

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

Circle: Yes (No)

If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

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

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

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

Arialink Telecom, LLC was granted a permanent Competitive Local Exchange Carrier (CLEC) license in the State of Michigan – MPSC case U-14357

2 DESCRIPTION OF PROJECT:

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

Applicant is a licensed CLEC and authorized to provide services.

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

Circle: Yes ☒ No

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

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

Applicant currently holds a license to provide basic local exchange service.

2 DESCRIPTION OF PROJECT:

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

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

Arialink is providing fiber optic connectivity to business and residential locations in the City. Fiber optic connectivity is used to provide high speed Internet, telephone and video services.

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

2.4 Please provide an anticipated or actual construction schedule.
Please refer to 2.3. Detailed plans will be forthcoming.

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

Arialink Telecom, LLC

Mr. Haran Rashes, Legal Counsel
212 East Grand River Avenue
Lansing, MI 48906-4328
517.318.3100
517.318.3099 (Fax)

With copies to:
Mr. Jason Schreiber, Manager
1223 Turner St
Suite A
Lansing, Mi 48906
517-492-1300
517-492-1398 (Fax)

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

Located at the local office

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

Carl Wesolek, principal
Rick Neil, principal
c/o Challenger Technologies LLC
3010 Wildwood Ave, Suite 1
Jackson, Mi 49202
517-768-1387

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

- 3.4.1 Worker's compensation;

- 3.4.2 Commercial general liability, including at least:

- 3.4.2.1 Combined overall limits;

- 3.4.2.2 Combined single limit for each occurrence of bodily injury;

- 3.4.2.3 Personal injury;

- 3.4.2.4 Property damage;

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

- 3.4.2.6 Independent contractor liability;

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

3.4.2.8 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

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

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

**Challenger Tehcnologies, LLC or
Arialink Services, LLC**

See contact information above.

4 CERTIFICATION:

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

1-19-06
Date

NAME OF ENTITY ("APPLICANT")
Jason Schnecko

By: Manager
Type or Print Name: Jason Schnecko

1-19-06
Title

::ODMA\PCDOCS\GRR\759295\5

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID RA ARIAL-2	DATE (MM/DD/YYYY) 03/15/06
PRODUCER Ackley-Peters-Haubert Ins Serv 125 South Main Street P O Box 129 Eaton Rapids MI 48827-0129 Phone: 517-663-2651 Fax: 517-663-8181		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED		INSURERS AFFORDING COVERAGE	NAIC #
Arialink Telecom, LLC 1223 Turner St Suite A Lansing MI 48906		INSURER A: Auto Owners Insurance Co.	18988
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

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

INSR ADD'D LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	BINDER	03/15/06	03/15/07	EACH OCCURRENCE \$ 1000000
	☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50000
	☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$ 5000
					PERSONAL & ADV INJURY \$ 1000000
	GENL AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 2000000
	☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG \$ 2000000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO				BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☐ HIRED AUTOS				
	☐ NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	☐ ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
	☐ OCCUR ☐ CLAIMS MADE				AGGREGATE \$
					\$
	☐ DEDUCTIBLE				\$
	☐ RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				OTHER \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$
	OTHER				E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$

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

CERTIFICATE HOLDER

CANCELLATION

NEUSTAR Neustar 46000 Center Oak Plaza Sterling VA 20166	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Rick A. Acker
---	---

Document List

New Search

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Vers 2.2 (07/05)

DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES, CORPORATION DIVISION
LIMITED LIABILITY COMPANY ANNUAL STATEMENT

2006

Entity Information	
Identification Number B40520	Limited Liability Company Name APJALINK TELECOM, LLC
Resident agent name and mailing address of the registered office JASON SCHREIBER 1223 TURNER ST. STE A. LANSING MI 48906	
The address of the registered office 1223 TURNER ST STE A LANSING MI 48906	

Electronic Signature		
Filed By JASON SCHREIBER	Title MEMBER	Phone 517-492-1300
☒ I certify that this filing is submitted without fraudulent intent and that I am authorized by the business entity to make any changes reported herein.		

Payment Information		
Payment Amount \$ 25.00	Payment Date/Time 03/20/06 15:42:30	Reference No. 71315 6882 B40520

Required by Section 207, Act 23, Public Acts of 1993

INFORMATION & INSTRUCTIONS

Annual Statement must be signed in accordance with MCL 450.4103.

For Domestic Limited Liability Companies - It may be signed by a member, if managed by members, by a manager if managed by managers, or by an authorized agent of the company.

CLARK HILL
PLC
ATTORNEYS AT LAW

212 East Grand River Avenue
Lansing, Michigan 48906
Tel. (517) 318-3100 ■ Fax (517) 318-3099
www.clarkhill.com

Haran C. Rashes
Phone: (517) 318-3019
E-Mail: hrashes@clarkhill.com

March 21, 2005

Mr. Jason Schreiber
Chief Executive Officer
Arialink Telecom, LLC
1223 Turner Street, Suite A
Lansing, MI 48906

Re: Metropolitan Extension Telecommunications Rights-of-way Oversight Act
(METRO ACT) Permit
City of Muskegon, Michigan

Dear Mr. Schreiber:

You have asked our opinion regarding two questions encountered by Arialink Telecom, LLC during the process of applying for permits under the Metropolitan Extension Telecommunications Rights-of-way Oversight Act ("METRO Act") in the City of Muskegon. Specifically those two questions are: 1) Do all of Arialink's underground facilities need to be registered with the MISS DIG System? and, 2) Does the city have the right to request removal and/or relocation of Arialink's facilities for any public project without compensation.

I. DO ALL OF ARIALINK'S UNDERGROUND FACILITIES NEED TO BE ON THE MISS DIG SYSTEM?

MISS DIG System, Inc. is a statewide one-call construction safety and utility damage-prevention company. Since the 1974 enactment of Public Act 53, MCL 460.701, all public utilities and telephone companies having underground facilities are required to notify MISS DIG of any underground construction and notify MISS DIG and the local county in which underground facilities are to be installed of "every city, village, township, and section within the township in the county in which it has underground facilities" as well as designating a representative to receive notice of any underground work to be performed by others.

In addition, PA 53 requires that any public agency or municipality that "that pursuant to law requires a person to obtain a permit" to install underground facilities, must as a condition of that permit require compliance with PA 53.

The City of Muskegon is allowed, and obligated, to require Arialink to register its proposed underground facilities with MISS DIG as a condition of issuing a METRO Act permit.

5249444v.1 23744/102044

Detroit, Michigan ■ Birmingham, Michigan ■ Lansing, Michigan

CLARK HILL PLC

Mr. Jason Schreiber
March 21, 2006
Page 2

II. DOES THE CITY HAVE THE RIGHT TO REQUEST REMOVAL AND/OR RELOCATION OF
ARIALINK'S FACILITIES FOR ANY PUBLIC PROJECT WITHOUT COMPENSATION?

In *City of Taylor v Detroit Edison Co*, 263 Mich. App. 551, 689 N.W.2d 482 (2004), *leave granted*, 474 Mich. 877; 704 N.W.2d 75 (2005), the Michigan Court of Appeals reiterated its "general rule that relocation costs may be imposed on the utility if necessitated by the municipality's discharge of a governmental function, while the expenses must be borne by the municipality if necessitated by its discharge of a proprietary function. In that case, the City of Taylor ordered The Detroit Edison Company to pay for the relocation of its utility lines from power poles to underground conduits to facilitate the reconstruction of Telegraph Road through the City of Telegraph. The Court found that the aesthetic concerns of a municipality to improve its community appearance is a reasonable governmental interest. Where government interests are concerned, i.e., a necessary public purpose, the utility or telephone company can be required to pay for relocation of its facilities to facilitate that public purpose. The Court did, however, note that such "expenses must be borne by the municipality if necessitated by its discharge of a proprietary function," which is defined by the Court "as any activity conducted for the purpose of producing a pecuniary gain or profit for the governmental agency, excluding any activity normally supported by taxes or fees."

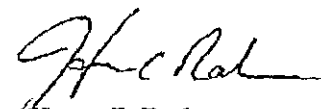
The Michigan Supreme Court has granted Edison's request for leave to appeal this case "for the purpose of addressing what powers a City has over utilities under its constitutional authority to exercise reasonable control over its streets, whether that authority invariably allows the City to shift the costs of relocation of utility equipment to the utility, and how the City's constitutional authority should be reconciled with the MPSC's broad authority to regulate utilities." The case is still in the briefing stage and a decision on appeal is not expected until late this year or early 2007.

Under current Michigan law, the City of Muskegon would have the right to request removal and/or relocation of Aerialink's facilities for any necessary governmental public project without compensation.

If you have any further questions in this matter, please do not hesitate to call.

Very truly yours,

CLARK HILL PLC



Haran C. Rashes

:hcr

Affirmative Action
231/724-6703
FAX/722-4219

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

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

Clerk
231/724-6705
FAX/724-4178

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

Engineering
231/724-6707
FAX/727-6904

Finance
231/724-6713
FAX/724-6768

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

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

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

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

Manager's Office
231/724-6724
FAX/722-4214

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

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

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

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

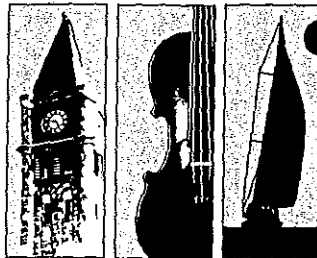
Public Works
231/724-4100
FAX/722-4188

Treasurer
231/724-6720
FAX/724-6768

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

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

MUSKEGON



West Michigan's Shoreline City

May 12, 2006

Mr. Orjiakor N. Isiogu, Director
Telecommunications Division
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing MI 48909

Dear Mr. Isiogu:

Attached please find an original "RIGHT-OF-WAY TELECOMMUNICATIONS PERMIT" as executed between Arialink Telecom, L.L.C. and the City of Muskegon.

Sincerely,

CITY OF MUSKEGON

A handwritten signature in black ink, appearing to read "Lee J. Slaughter".

Lee J. Slaughter
Assistant City Manager

OJS/pb

Att.

c: Jason Schreiber, Arialink Telecom, L.L.C. (letter only)

pb/O/METRO ACT, MI PUB SRVC COMM, PERMIT 051206

Affirmative Action
231/724-6713
FAX/722-1214

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

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

Clerk
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FAX/724-4178

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FAX/727-6904

Finance
231/724-6713
FAX/724-6768

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

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

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

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

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

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

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

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

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

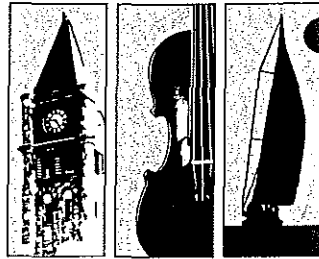
Public Works
231/724-4100
FAX/722-4188

Treasurer
231/724-6720
FAX/724-6768

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

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

MUSKEGON



West Michigan's Shoreline City

May 8, 2006

Mr. Jason Schreiber, Manager
Arialink Telecom, L.L.C.
1223 Turner St., Suite A
Lansing MI 48906

Dear Mr. Schreiber:

Thank you for providing the required documents, per our April 6, 2006 request.

Attached please find four (4) original sets of "RIGHT-OF-WAY TELECOMMUNICATIONS PERMIT." Please execute each set and return three (3) sets to our office. Retain the fourth for your records. Our office will forward an original document to the Michigan Public Service Commission.

Sincerely,

CITY OF MUSKEGON

A handwritten signature in black ink, appearing to read "Lee J. Slaughter".

Lee J. Slaughter
Assistant City Manager

OJS/pb

C: Mr. Orjiakor N. Isiogu, MPSC (letter only)

pb/O/METRO ACT, ARIALINK, PERMIT FOR SIGNATURE 050806

METRO Act
Unilateral Form
Revised 12/06/02

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

This permit issued this 28 day of March, 2006 by City of Muskegon.

1 Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean City of Muskegon, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permittee shall mean Arialink Telecom, L.L.C. organized under the laws of the State of Michigan whose address is 1223 Turner Street, Suite A, Lansing, MI 48906.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms set forth herein.
 - 2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.
 - 2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.
- 2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

- 3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:
 - 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is included in the official, business contact list filed with the Municipality.
 - 3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them will be the engineering contact included in the official , business contact list filed with the Municipality.
 - 3.1.3 The name, title, address, e-mail address and telephone numbers of

Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities are included in the official, business contact list filed with the Municipality.

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is included in the official, business contact list filed with the Municipality.

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency is included in the official, business contact list filed with the Municipality.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7). In accordance with Section 6(5) of the METRO Act, a provider's existing and proposed facilities that is a trade secret, proprietary or confidential information is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

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

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

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

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

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

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

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

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

amended.

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

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

5 Indemnification

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

6 Insurance

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

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

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

premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

7.1.1 Five years from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time

construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

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

9 Fees

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

10 Removal

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

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

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

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

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality: CITY OF MUSKEGON, P.O. Box 536, Muskegon, MI 49443-0536.

12.1.2 If to Permittee: Arialink Telecom, L.L.C.'s Manager at the address included in Permittee's contact information maintained with the Municipality and included in Arialink Telecom, L.L.C.'s contact list

filed with the Municipality.

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

13 Other items

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

Attested:

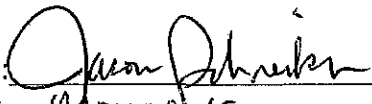
CITY OF MUSKEGON

By: Dail Kunderger
Its: City Clerk
Date: 4-4-06

By: [Signature]
Its: Mayor
Date: 3-28-06

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

Arialink Telecom, L.L.C.

By: 
Its: Manager
Date: 5/9/09

DATE: March 21, 2006
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-050115

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **530 Catherine – AREA 11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-050115– 530 Catherine

Location and ownership: This structure is located on Catherine between Chestnut and Maple and is owned by Emma/James Harden, 1541 Leahy St., Muskegon, MI 49442.

Staff Correspondence: A dangerous building inspection was conducted on 10/10/05. An interior fire inspection was conducted 06/23/05. The Notice and Order to Repair was issued on 10/14/05. On 01/05/06 the HBA declared the structure substandard and dangerous.

Owner Contact: There have been no permits issued, and no owner contact since fire.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$17,100

Estimated cost to repair: \$50,000

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

City Commission Recommendation: The commission will consider this item at it's meeting Tuesday, March 28, 2006.

CITY OF MUSKEGON

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

DANGEROUS BUILDING INSPECTION REPORT

Monday, October 10, 2005

Enforcement # EN050115 **Property Address** 530 CATHERINE AVE
Parcel #24-205-077-0013-10 **Owner** WILLIS EMMA/HARDEN JAMES

Inspector: Henry Faltinowski

Date completed: 10/10/2005

DEFICIENCIES:

Uncorrected

1. Home has been 75% damaged by fire.
2. Remove all fire damaged material and temporary add structural supports to evaluate the extent of damage.
3. Call for inspection of home and submit plan of repair after inspections has written a complete report of damage.

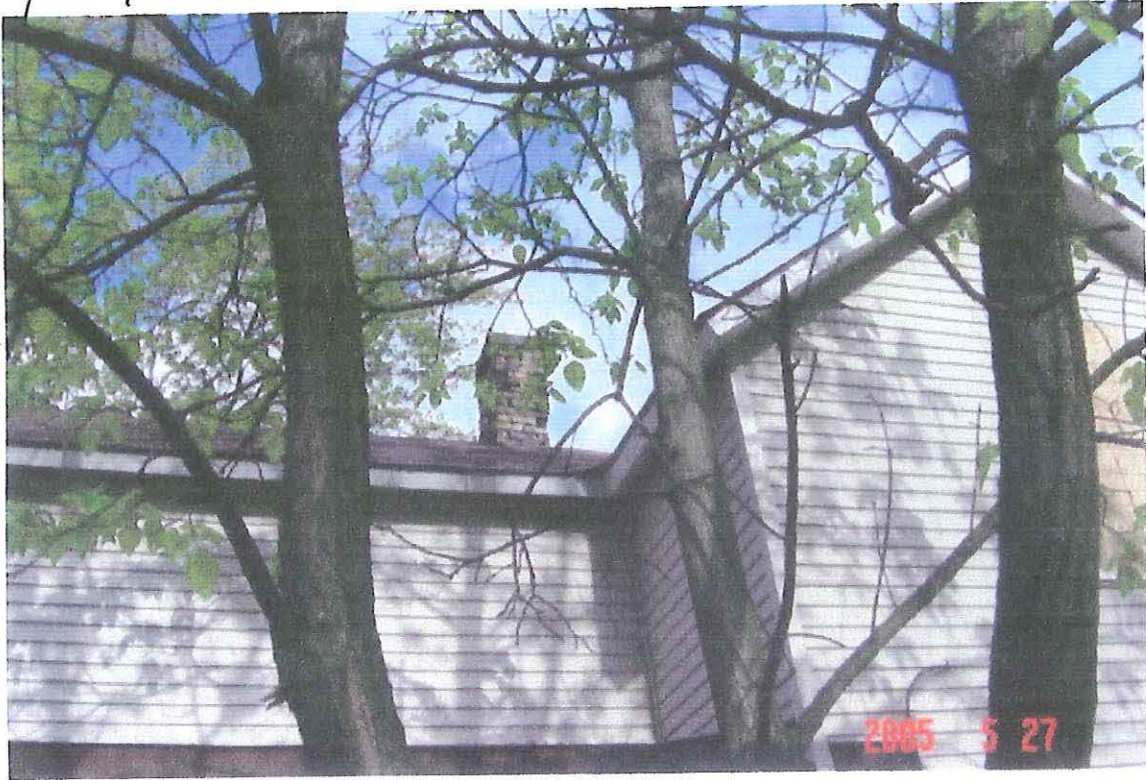
Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

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

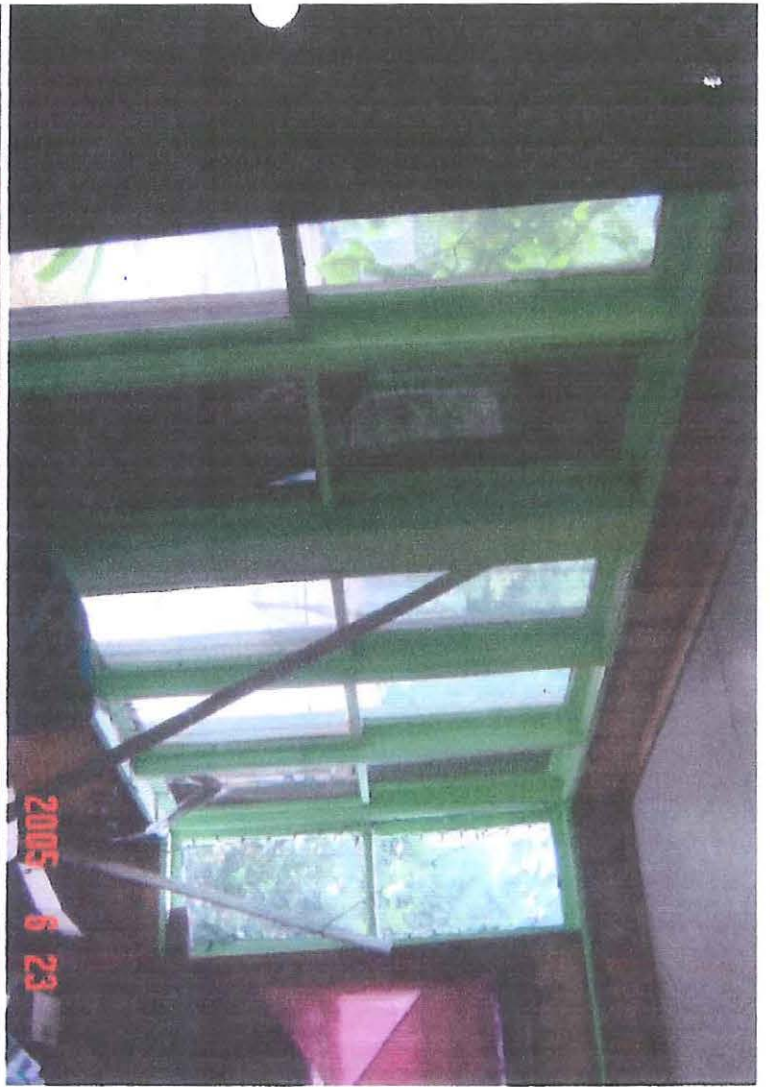
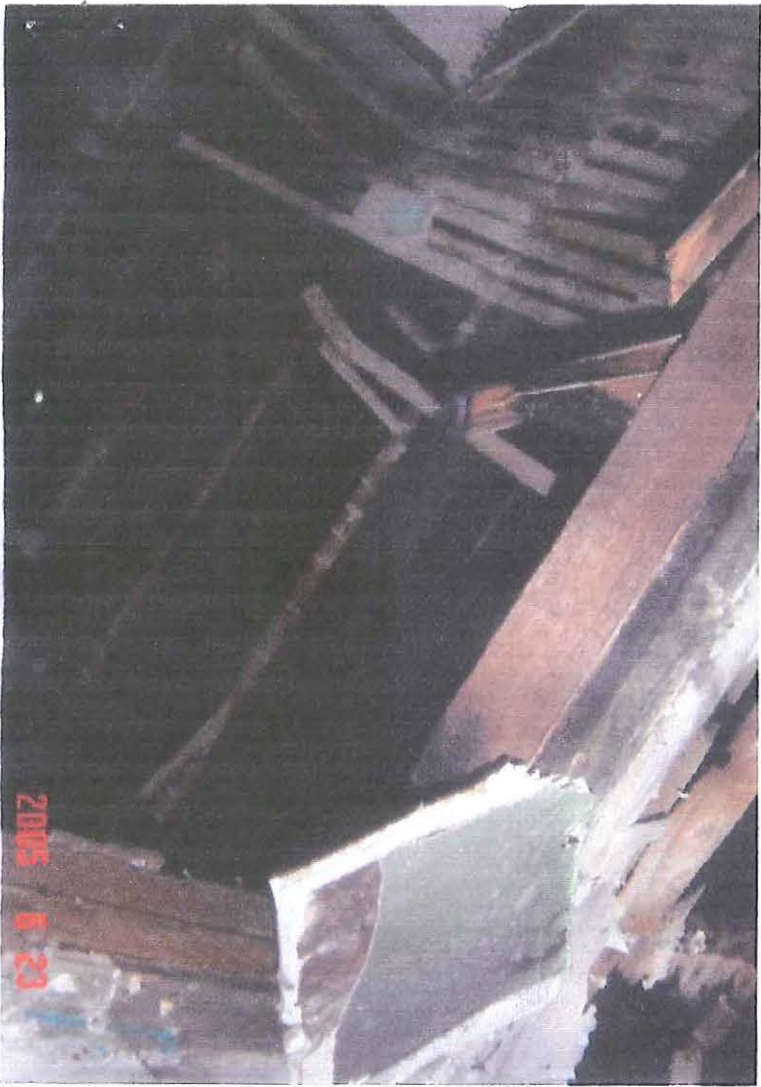
Henry Faltinowski, Building Inspector

Date

530 CATHARINE FIRE DAMAGED
5/27/2005 DANGEROUS BUILDING



pictures for file



530 CATHARINE

DATE: March 21, 2006
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: **EN-050116**

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1435 Park – Area 10** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-050103 – 1435 Park St
Location and ownership: This structure is located on Park between Grand and Washington and is owned by Federal National Mortgage, 1 S Wacker Dr, Chicago, IL 60606.

Staff Correspondence: A dangerous building inspection was conducted on 10/31/05. The Notice and Order to Repair was issued on 11/02/05. On 01/05/06 the HBA declared the structure dangerous, substandard and a public nuisance.

Owner Contact: No one was present to represent case at HBA meeting. A letter was received from Attorney Thomas H. Andrews stating a Mr. Ron Vogel and Mark Selley were working on the property and that a interested party requested to purchase on land contract and wanted to moved in right away, problems arose where vandalism of property occurred. A call was received by the Inspection Department from Mr. Vogel stating he was washing his hands of the property. No permits were issued and no owner contact since that time.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$22,900

Estimated cost to repair: \$20,000

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

City Commission Recommendation: The commission will consider this item at it's meeting Tuesday, March 28, 2006.

**CITY OF MUSKEGON
DANGEROUS BUILDING INSPECTION
REPORT**

Wednesday, November 2, 2005

Enforcement # EN050116
Parcel #24-205-408-0001-00

Property Address 1435 PARK ST
Owner VOGEL GLEN E

Inspector: Henry Faltinowski

Date completed: 11/01/2005

DEFICIENCIES:

Uncorrected

1. Replace floor joists rotted and cut in basement. Frame all floor openings to code.
2. Replace-repair all wall, floor, ceiling damage.
3. Replace broken out windows.
4. Remove rotted shed or rebuild to code.
5. Provide information on deck - built without permit.
6. All handrails and guardrails to code.

Uncorrected

1. Rewire house to 2003 MRC.
2. Install smoke alarms to 2003 MRC.
3. Replace electric service to 2003 MRC.

Uncorrected

1. New Plumbing w/o permits.
2. Leaky sewer in basement at clean out.
3. Need to have a union on gas supply at furnace .
4. Dryer vent plugged up.
5. Ductwork Dirty.
6. Toilets to be caulked.
7. Vent fans in bathrooms.
8. Shower valves to be posi temp.

Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

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

Henry Faltinowski, Building Inspector

Date

DATE: March 21, 2006
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN-03-74

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1357 Terrace –Garage – Area 11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN-03-74 – 1357 Terrace -Garage

Location and ownership: This structure is located on Terrace between Catawba and McLaughlin and is owned by George S. Komar II, 1357 Terrace St., Muskegon, MI 49442.

Staff Correspondence: A dangerous building inspection was conducted on 08/04/03. The Notice and Order to Repair was issued on 08/07/03. On 10/02/03 the HBA tabled case for 60 days to allow owner time to obtain permits and complete repairs. A permit was issued 10/10/03 and expired 11/30/03. A letter was sent 10/18/05 requesting a final inspection be scheduled. There was a fire inspection report conducted on the house on 11/08/05. The case came before HBA 01/05/06 and was declared dangerous, substandard and a public nuisance.

Owner Contact: The owner was Rene Crosby, 1357 Terrace at the time of the HBA meeting dated 10/02/03. Mr. and Mrs. Crosby were present to represent this case. Mr. Crosby asked what made his garage "dangerous". He stated he had already begun repairs when he received the first notice and he is constantly bombarded with city notices. He has put a lot of money in to the interior and has painting the exterior of the garage left to do. Mr. Grabinski stated they have no problem with the house, the house looks very nice. This structure is in the area being addressed at this time for fight blight and that's why his garage was noticed. He also stated that in the conversation he had on 8/19/03 Mr. Crosby said he would be in to apply for the permit to repair the garage and be completed by 11/15/03 and that hasn't happened. As far as constituting it a dangerous building, there are 14 items in the ordinance that would apply to constitute this garage being a dangerous building. Mr. Crosby stated he thought as long as he had the garage painted by 11/15/03 it was acceptable, he wasn't aware that he had to pull the permit by a certain date. Mr. Grabinski apologized for the misunderstanding about the permit date. The property was in foreclosure 09/22/03 and went back to Option One Mortgage/Wells Fargo Bank and then was purchased by George Komar 10/01/2004. A letter was sent 10/18/06

requesting a final inspection be scheduled. Mr. Komar scheduled an inspection in October 2006 but it was found that no progress was made, repairs incomplete.

Financial Impact: CDBG

Budget action required: None

State Equalized value: \$30,000 (Entire property)

Estimated cost to repair: \$4,000 (Garage Only)

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

City Commission Recommendation: The commission will consider this item at it's meeting Tuesday, March 28, 2006.

CITY OF MUSKEGON
DANGEROUS BUILDING INSPECTION REPORT

1357 Terrace – Garage

8/4/03

Inspection noted:

1. Roof covering on garage is deteriorated and needs to be replaced.
2. Replace all rotted sheathing.
3. Replace any damaged rafters.
4. All work requires construction permits. These permits must be obtained prior to work beginning.

Please contact Inspection Services with any questions at 231-724-6715.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 4-23 OF THE MUSKEGON CITY CODE.

HENRY FALTINOWSKI, BUILDING INSPECTOR

DATE



1357 Terrace
(Garage)



MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN

**RESOLUTION FOR DEFINING A DAY OF WORK OR
HOURS PER MONTH FOR MERS RETIREMENT PURPOSES**

Note: To adopt the part-time to full-time employee service credit program under Plan Document Section 4(6), the governing body must adopt the Uniform Resolution Defining Hours Per Month For Part-Time Employees and Service Credit Conversion Upon Promotion to Full-Time Status.

In accordance with Section 3(1) of the MERS Plan Document, as the _____

City Commission
(Governing Body)

City of Muskegon
(Municipality)

does hereby certify that a day of work, or the number of hours of work in a month, for

Police Patrol Union Employees & Command for retirement purposes, shall
(Indicate all employees or division name and number)

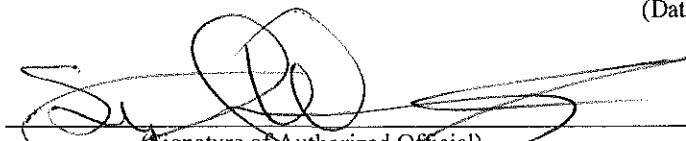
consist of one of the following to be effective as of July 1, 2006.
(Date)

(Please complete either A or B)

A. _____ A day shall consist of _____ hours.
(Ten (10) days a month of such work days equals one month of credited service.)

B. X A month shall consist of 150 hours.
(Each month of such work hours equals one month of credited service.)

I hereby certify that the above is a true copy of a Resolution adopted at the meeting of the
governing body held on March 28, 2006.
(Date)


(Signature of Authorized Official)
Stephen J. Warmington

Mayor
(Title)

RETURN TO: Municipal Employees' Retirement System of Michigan
1134 Municipal Way
Lansing, MI 48917



**RESOLUTION FOR ADOPTING MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF MICHIGAN
DEFINED BENEFIT PROGRAMS**

The City Commission of the City of Muskegon
(Governing body) (Participating entity)
whose fiscal year is (month and day) January 1 to Dec. 31, desires to make
available to its eligible employees (as defined below) benefits provided by the Municipal
Employees' Retirement System of Michigan (**MERS**), as authorized by 1996 PA 220. Benefits
available are those provided under the Plan Document of 1996.

IT IS RESOLVED that pursuant to the Initial Actuarial Valuation dated _____, _____, by MERS' actuary, MERS benefits stated in Section 1 below are to be provided to the following employee division (e.g., general, police and fire, DPW, union, non-union): Police Patrol.

(Separate resolutions are required for each division)

Please note: If no Initial Valuation has been done by MERS' actuary on the specific benefit program (or combination of programs) selected below; or the Initial Valuation is more than one (1) year old at the time MERS' coverage becomes effective as provided under Section 4 of this Resolution; then, per Retirement Board requirements, this resolution will not be implemented until a current actuarial valuation is done by MERS' actuary and necessary supporting contribution rates certified.

1. Benefit programs/formulae (e.g., B-2 / F55 / V-8 / FAC 3 / E-2) selected are:
2.75%-75% MAX; F51(25); F55(10); FAC3; RS 50%; D-2
(If other than standard MERS' retirement benefits, supporting collective bargaining agreement to accompany this Resolution)
2. The required employee contribution is 6.0 %. (May be any percentage in hundredths of a percent, not to exceed ten [10] percent, unless higher rate is established by collective bargaining agreement accompanying this Resolution.)
- 3.1 Prior service credit with this municipality/court rendered previously by each covered employee in the division is subject to and shall be credited as provided under Section 2C(3) of the MERS Plan Document and MERS Initial Actuarial Valuation and Supplemental Valuation Procedure (as approved by the Retirement Board on September 28, 1999), whose respective terms are incorporated by reference.

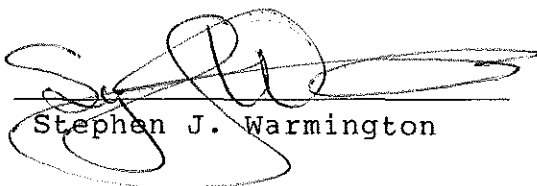
Choose only one:

- A. ☒ All prior service from date of hire.
B. ☐ Portion of prior service (actual service up to _____ years); or _____%.
C. ☐ Prior service proportional to assets transferred.
D. ☐ No prior service (if D selected, go to Section 4).

- 3.2 The Initial Valuation discloses the actuarial reduction in the employer's future contribution rate that will occur where assets of a preceding qualified plan (whether defined benefit or defined contribution plan) and/or other source are transferred to MERS.
- 3.3 In all asset transfers, the employer shall furnish MERS with all necessary and specific information required by MERS on the allocation of employer and employee contributions and investment earnings, along with taxable and nontaxable status on the employee contribution portion.
4. The effective date of this Resolution for making deductions for the employee contributions specified above, and for the payment of necessary employer contributions to MERS, as required in the Plan Document, shall be the same date that MERS' coverage begins, which is July 1, 2006.
5. For municipalities, Plan Section 41 requires adoption by affirmative vote of a majority of the governing body; for courts, see Plan Section 41A. A complete copy of the fully executed collective bargaining agreement (if applicable), and certified copy of the complete official minutes or other official authorizing action for the open meeting at which this resolution was adopted must be forwarded to MERS with this resolution.

Certified this 28 day of March, 2006.

By:



Stephen J. Warmington

Title:

Mayor



**RESOLUTION FOR ADOPTING MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF MICHIGAN
DEFINED BENEFIT PROGRAMS**

whose fiscal year is (month and day) January 1 to Dec. 31, desires to make available to its eligible employees (as defined below) benefits provided by the Municipal Employees' Retirement System of Michigan (**MERS**), as authorized by 1996 PA 220. Benefits available are those provided under the Plan Document of 1996.

(Separate resolutions are required for each division)

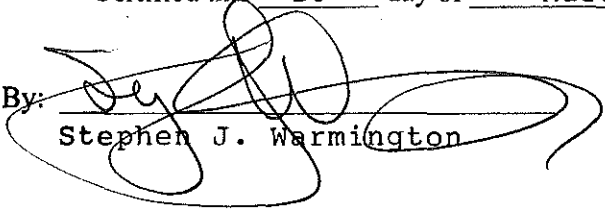
1. Benefit programs/formulae (e.g., B-2 / F55 / V-8 / FAC 3 / E-2) selected are:
2.75% (80% MAX); F53(25); F55(10); FAC3; D-2; RS 50%
(If other than standard MERS' retirement benefits, supporting collective bargaining agreement to accompany this Resolution)
2. The required employee contribution is 6.0 %. (May be any percentage in hundredths of a percent, not to exceed ten [10] percent, unless higher rate is established by collective bargaining agreement accompanying this Resolution.)
- 3.1 Prior service credit with this municipality/court rendered previously by each covered employee in the division is subject to and shall be credited as provided under Section 2C(3) of the MERS Plan Document and MERS Initial Actuarial Valuation and Supplemental Valuation Procedure (as approved by the Retirement Board on September 28, 1999), whose respective terms are incorporated by reference.

A. X All prior service from date of hire.
 B. Portion of prior service (actual service up to _____ years); or _____%.
 C. Prior service proportional to assets transferred.
 D. No prior service (if D selected, go to Section 4).

- 3.2 The Initial Valuation discloses the actuarial reduction in the employer's future contribution rate that will occur where assets of a preceding qualified plan (whether defined benefit or defined contribution plan) and/or other source are transferred to MERS.
- 3.3 In all asset transfers, the employer shall furnish MERS with all necessary and specific information required by MERS on the allocation of employer and employee contributions and investment earnings, along with taxable and nontaxable status on the employee contribution portion.
4. The effective date of this Resolution for making deductions for the employee contributions specified above, and for the payment of necessary employer contributions to MERS, as required in the Plan Document, shall be the same date that MERS' coverage begins, which is July 1, 2006.
5. For municipalities, Plan Section 41 requires adoption by affirmative vote of a majority of the governing body; for courts, see Plan Section 41A. A complete copy of the fully executed collective bargaining agreement (if applicable), and certified copy of the complete official minutes or other official authorizing action for the open meeting at which this resolution was adopted must be forwarded to MERS with this resolution.

Certified this 28 day of March, 2006.

By:


Stephen J. Warmington

Title: Mayor



Fiesta! Sabor Latino Festival

The Hispanic Community Services coalition came together in May of 2005 to form a Hispanic festival. The purpose of the festival is to educate the community at large about the beautiful culture of the Hispanic/Latino population and to better integrate the gap of communities dealing with language and ethnicity barriers.

The committee consists of passionate people who are committed to present such culture to the community in a positive manner. The festival will also act as a fundraiser for several programs as follows:

- Tutorial support for state school districts in the Muskegon Area Intermediate School District. This program is already in place at Muskegon High School overseen by Federico Martinez and volunteers from MCC.
- schools in the Muskegon school district for Hispanic/Latino/Migrant students.
- Educating the Hispanic/Latino/Migrant population on diabetes.
- Educating the Hispanic/Latino/Migrant population on health and social resources available to them within Muskegon county.
- We are collaborating with resources from Oceana and Newaygo counties as well as resources within the Muskegon area.
- The festival will take place at Hackley Park in Muskegon.
 - In the event of hazardous climate, the Walker Arena has been reserved for said event.
- The festival will be on:
 - **Friday, May 5th, 2006, from 5:00 pm to 11:00 pm**
 - **Saturday, May 6th, 2006, from 11:00 am to 11:00 pm.**
- Friday, May 5th, will be a night dedicated to the celebration of “Cinco de Mayo” marking the Battle of Puebla in Mexico with a dance featuring a Mexican band playing traditional styles.
- Saturday, May 6th, will be dedicated to other Hispanic/Latino cultures such as Puerto Rico, Dominican Republic, Cuba and others in South America.
- These countries will be presented by an array of food booths specializing in ethnic cuisine, bands playing specific music from such countries, a Mercado (Market Place) selling items representing each country as well as a car and low rider bike show.

FUNDING

The Hispanic Community Services Coalition is a group of community people focusing on the ability to celebrate and serve the Hispanic community of Muskegon County under the umbrella of the Muskegon Community Health Project.

The Muskegon Community Health Project will serve as a fiduciary to our group and will receive administration fees pending the revenues made off the festival.

Funding for this festival will be provided by many in-kind donations, festival grants and solicitation done by the Solicitation Committee. We are in the hopes of raising a total of \$25,000.00 towards the festival to cover all costs incurred.

FESTIVAL DESCRIPTION, HISTORY & PURPOSE

Fiesta! Sabor Latino Festival will be the first to be held in Muskegon County in 2006. All proceeds will be utilized by the Hispanic Community Services Coalition to provide education, work shops, and training to our Hispanic/Latino/Migrant community. The Festival will provide an opportunity to share the vividness of the Hispanic/Latino music, art and culinary talents as well as a fundraiser for local programs.

FIESTA! SABOR LATINO FESTIVAL MISSION STATEMENT

The mission of Fiesta! Sabor Latino Festival is to promote an understanding and awareness of the rich, diverse culture within the Hispanic/Latino community while raising funds to enhance services and programs to benefit the Hispanic/Latino/Migrant community provided by the Hispanic Community Services Coalition of Muskegon.

FESTIVAL HIGHLIGHTS

Friday, May 5th, 2006

Mexican Dance

Beer Tent

Saturday, May 6, 2006

Children's Activities

Cultural Food Booths

El Mercado (cultural market Place)

DJ playing all day

Car and Low Rider Bike Show

Resource Area with screenings

Beer Tent

Hispanic/Latino Band to end the festival

Hispanic Art Display

HEAD COMMITTEES:

Committee Chair

Federico Martinez,

The Muskegon Chronicle - Reporter

Committee Co-Chairs:

Emilio Trejo

Muskegon Police Department – Officer

Liz Chala-Hidalgo

Muskegon Community Health Project – Community outreach worker

Rita Green

Grand Haven Public Safety

Sonya Hernandez

Kent County Friend of the Court – Case manager

Ben Garza

Ben's Lock and Key – Business Owner

EVENT COMMITTEES:

Children's Activities:

Erika Perez

Department of Social Security
Administration

Entertainment:

Rozelinda Patino

Department of Social Security
Administration

Dennisse Santiago

Muskegon Resident

Volunteers:

David Cadena

Muskegon Resident

Cindy Courson

Muskegon Community College

Solicitation/Fundraising

Sonya Hernandez

Community Member

Veronika Anderson

Muskegon Public Schools

Beer Tent

Ben Garza

Ben's Lock and Key

Emilio Trejo

Muskegon Police Department

Mercado (Market Place)

Regina VanLinden-Torres

Food Booths:

Stella Perez

White Lake Comm. Education

David C. Runyan

Farm Bureau Insurance

Publicity:

Sonya Hernandez

Kent County Friend of the Court

Matt Rodriguez

Baker College

Veronika Anderson

Muskegon Public Schools

Tickets and Sales:

Ben Garza

Ben's Lock and Key

Emilio Trejo

Muskegon Police Department

Car Show:

Ben Garza

Ben's Lock and Key

Emilio Trejo

Muskegon Police Department

Resource Area:

Liz Chala-Hidalgo

Muskegon Community Health
Project



Fiesta! Latin Flavor Festival 2006

Hackley Park, Muskegon, Michigan

Friday, May 5, 2006 & Saturday, May 6, 2006

FESTIVAL MISSION STATEMENT

The mission of the Fiesta! Sabor Latino Festival 2006 is to promote an understanding and awareness of the rich diverse cultures within the Hispanic community; while raising funds to enhance services and programs to benefit the Hispanic community provided by the Hispanic Community Services of the Muskegon Comm. Health Project.

Star sponsor - \$10,000 and above

Year round recognition at all events
 Year round advertisement of company logo on all flyers
 Ad in special event guide publications
 Company logo featured on main stage
 Name mentions on radio
 Name printed on t-shirts

Magnificent sponsor - \$5,000 and above

Year round advertisement of company logo on all flyers
 Location choice of Festival exhibitor space
 Company logo featured on main stage
 Name mention on radio

Godparent sponsor - \$2,500 and above

Company logo on festival advertisement
 Festival exhibitor table
 Ad in festival program
 Name mention on radio

Brotherly Sponsor - \$1,000 and above

Company logo on festival advertisement
 Festival exhibit table
 Ad in festival program
 Name mention on radio

Friendship sponsor - \$750 and above

Festival program donor group ad
 Festival group donor recognition

Accompaniment sponsor - \$500 or below

Company logo on festival advertisement

Tax ID#: 911932918



An initiative of the Muskegon Community Health Project



Fiesta! Latin Flavor Festival 2006

Hackley Park, Muskegon, Michigan

Friday, May 5, 2006 & Saturday, May 6, 2006

SPONSOR SUBMISSION FORM

Our company/organization would like to sponsor mount: _____

___ **Star Sponsor \$10,000+**

Amount: _____

___ **Magnificent Sponsor \$5,000+**

Amount: _____

___ **Godparent Sponsor \$2,500+**

Amount: _____

___ **Individual Sponsor \$25+**

Amount: _____

___ **Brotherly Sponsor \$1,000+**

Amount: _____

___ **Friendship Sponsor \$750+**

Amount: _____

___ **Accompaniment Sponsor \$500 or below or OTHER**

Amount: _____

Tax ID#: 911932918

Name: _____ Title: _____

Company/Organization: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____

E-Mail: _____ Web: _____

Signature: _____ Date: _____

Please return signed agreement with your contribution for sponsorship.

Payable to: **Muskegon Community Health Project/Hispanic Community Services Coalition**

Mail to: **565 W. Western Ave., Muskegon, MI 49440**



An initiative of the Muskegon Community Health Project

Hispanic Community Services Coalition Fundraiser to Benefit the First Annual



Thursday, April 13, 2006

Sponsored by

El Camino Tacos y Cantina

2 – 5 p.m. office parties

5 – 10 p.m. public welcome

Tax deductible donations

\$15 (advanced purchase)

\$20 (purchased at door)

Delicious Food/Entertainment

Food is complimentary by El Camino Tacos y Cantina

Raffle/Door Prizes

Cash Bar (happy hour prices)

For more information, please call the Muskegon Community Health Project,
Liz Chala at 231-728-3201



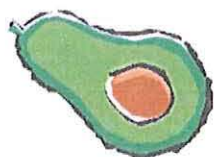
Muskegon Community Health Project

iFiesta!
SABOR
LATINO
2006

Sponsored by the Hispanic
Community Services Coalition
www.muskegonfiesta.com



DANCE
MARKET



MUSIC



CAR & BICYCLE SHOW

ACTIVITIES FOR CHILDREN



FOOD



Join us in
celebrating our first
Fiesta Sabor Latino

at
Muskegon

HACKLEY
PARK

Corner of Webster & 3rd. Street

FRIDAY, MAY 5
5:00 - 10:30 p.m.

SATURDAY, MAY 6
12:00 - 10:30 p.m.

Tickets: \$5.00 per person
Children 10 and under
FREE

Stan Jasek

P.O. Box 486

Muskegon, Michigan 49443

Tel: 231-725-4284 E-mail: StanJasek@excite.com

Dear Mayor Warmington, City Manager Mr. Mazade, and City Commissioners:

I come before you today to alert you to what I believe is gross misuse of a city owned asset and possibly a series of frauds being perpetrated upon the citizens of Muskegon by the Director of the Michigan Alternative and Renewable Energy Center (MAREC), Imad Mahawili. I humbly ask that this Commission investigate the operations of MAREC.

I believe an investigation of this facility, its management and its director are in order.

The financial investment made by citizens of Muskegon (about \$4 million) and the citizens of the State of Michigan (approximately \$ 8million) into MAREC must be protected against such misuse and waste. An outside audit and review is needed.

MAREC was a project that was strongly supported by you Mr. Mayor, Mr. Mazade as City Manager and Mr. Tim Paul as City Finance Director. Without your collective efforts and hard work, MAREC would never have come to fruition here in downtown Muskegon. We all are grateful for your efforts on MAREC. You along with others have planted a great "seed" with MAREC in Muskegon, one that should be bearing a great deal of "fruit" for the City and citizens

MAREC was developed to position Muskegon as the base for Michigan's only energy focused Smart Zone. Its goal was to assist local businesses and individuals in developing advanced energy technology businesses, products and to create jobs

MAREC was to be the research and resource center that inspires the public and especially our young people to see the potential of the science of energy and energy technology. A key objective is to educate students, business people and government officials on alternative and renewable energy technologies.

MAREC was also to be the business incubator for local companies. A primary mission was to create jobs, investment and manufacturing based upon the new energy technologies being developed. The primary mission was for the commercialization, application, and integration of these technologies into real products for manufacturing here in Muskegon and in the State of Michigan.

To date, MAREC is failing in its mission on all fronts.

Based upon information and belief, Imad Mahawili, the director and head of MAREC, is believed to be engaged in the following:

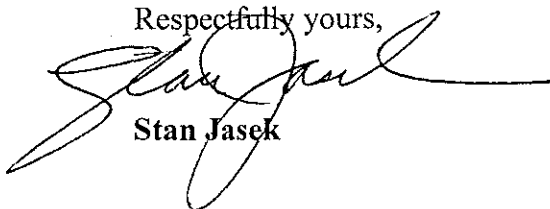
1. Financial impropriety and misuse of public money. There currently exist three businesses at MAREC. It is alleged Mahawili has personnel financial interests in all three businesses and stands to benefit personally. This is a serious conflict of interest and breach of his fiduciary duty.
2. Fraud and deception upon the public. It is alleged that Mahawili is using public money and assets for his own financial gain and to further fund his private business interests at the expense of the citizens of Muskegon.
3. Nepotism. Mahawili using public monies has hired his own family member(s) instead of conducting open and fair employment practices.
4. Breach of the Public Trust. Mahawili is engaged with a Wisconsin lighting company. The center was designed and it's a priority is and should continue to be the development of Michigan based business, primarily local businesses.
5. Mahawili has ordered the existing non-GVSU personnel out of the building by April 1, 2006. The building is a publicly financed building supported by the citizens of Muskegon. WHY?
6. Discrimination in employment practice and selection of personnel. As a public institution and University operated research center, Mahawili is engaged in a pattern to exclude certain race and types of individuals from employment and opportunity at the center.
7. Restriction of Competition. As a public facility, Mahawili is actively engaged in blocking, restricting and removing any business or persons or companies who do not follow or support his personnel business agenda.

Many people in Muskegon have worked very hard to build this center of excellence and have the Smart Zone located here in Muskegon. An investigation is in order.

The people of Muskegon need to be helped and uplifted by MAREC. It was never intended for the Muskegon public to finance Maharini's business interest or personal businesses.

I appreciate you and the Commission looking into this matter.

Respectfully yours,



Stan Jasek