

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 22, 2011

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. Lease Proposal for MACkiteboarding at Pere Marquette Park. PUBLIC WORKS
 - C. City – MDOT Agreement for the Reconstruction of Temple Street, Young to Laketon. ENGINEERING
 - D. City – MDOT Agreement for the Reconstruction of Getty Street, Laketon to Evanston. ENGINEERING
 - E. Amend Chapter 30 of the Code of Ordinances – Fire Prevention. PUBLIC SAFETY
- ❑ **PUBLIC HEARINGS:**
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
 - A. SECOND READING: Amendment to the Zoning Ordinance – Medical Marihuana Facilities. PLANNING & ECONOMIC DEVELOPMENT
 - B. SECOND READING: Amendment to the City Code of Ordinances – Medical Marihuana Regulation and Licensing. PLANNING & ECONOMIC DEVELOPMENT
- ❑ **NEW BUSINESS**

A. Contract for Assessing Services. FINANCE

B. 2011-2012 Healthcare & Wellness Program. FINANCE

C. 2011-2012 CDBG/HOME Recommendations. COMMUNITY &
NEIGHBORHOOD SERVICES

D. Civil Service Budget Adjustment. CITY MANAGER

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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

Date: March 22, 2011
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the March 7th Commission Worksession Meeting and the March 8th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, March 7, 2011
5:30 p.m.
City Commission Chambers

MINUTES

2011-13

Present: Mayor Warmington, Vice Mayor Gawron, Commissioners Spataro, Wierengo, Wisneski, Carter, and Shepherd.

Lakeshore Baseball Club's Request to Maintain Campbell Field.

Jim Grevel from the Lakeshore Baseball Club explained their request to maintain the baseball fields at Campbell Field. Bob Richardson representing West Michigan Little League stated that they are confident that they can work together.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve Lakeshore Baseball Club's request to maintain Campbell Field based on approval of staff.

MOTION PASSES

Easements – Consumers Energy Company.

Consumers Energy Company is seeking four easements from the City of Muskegon for its Muskegon-Cobb #1 and #2 line relocation projects. The project objective is to relocate five High Voltage Distribution lines that currently exist in the wetlands area East of Consumers Energy's Cobb Generation Plant, to a location out of a wetlands area. This is being done to facilitate access, which could reduce the size and duration of the outages, should an event in the area damage these lines. Access is currently limited, due to changing environmental restrictions. William Carlson and Pete from Consumers Energy Company explained the request and answered questions. This will be voted on at the March 8th City Commission Meeting.

Amendment to the City Code of Ordinances – Medical Marihuana Regulation and Licensing.

Mike Franzak explained the item. Discussion was held and comments were heard. This will be discussed further at the Public Hearing on the March 8th City Commission Meeting.

Adjournment.

Motion by Commissioner Carter, second by Commissioner Shepherd to adjourn at 7:06 p.m.

MOTION PASSES

Ann Marie Becker, MMC
City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 8, 2011

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 8, 2011.

Mayor Warmington opened the meeting with a prayer from Elder George Monroe from the Evanston Avenue Baptist Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Chris Carter, Clara Shepherd, Lawrence Spataro, Sue Wierengo, and Steve Wisneski, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker.

2011-14 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the City Commission Meeting that was held on Tuesday, February 22, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Purchasing Cards. FINANCE

SUMMARY OF REQUEST: The City has used purchasing cards since 1994 as a means to streamline purchasing and vendor payment processes. The State of Michigan recently negotiated its P-card program with Bank of America and is extending the contract to other units of government through the MiDeal joint purchasing program. The state program offers substantial benefits over our current arrangement with 5/3 Bank:

- Higher rebates – Currently we receive a fixed 1% rebate on P-card purchases. This rebate generates about \$35,000 annually. Under the state program, our purchasing volume is pooled with the state and other

members of the program. Currently, rebates would be about 1.38% and would grow as additional members join the program.

- User interface – The current card management user interface is not user friendly and has caused some staff dissatisfaction. Staff has worked through a demonstration of the interface for the state P-card and found it to be superior in terms of usability and functionality.

FINANCIAL IMPACT: The change will generate an estimated \$13,000 in additional rebates that will grow further as program membership increases. Staff efficiencies will be realized from the more user-friendly P-card management user interface. Finally, the City benefits because the state has borne the costs of the RFP and due diligence process.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Authorize staff to execute documents needed to join the state P-card program.

F. Liquor License Request for Watermark Banquet and Conference Center, 920 Washington. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Watermark Banquet and Conference Center, LLC, 920 Washington Street to amend initial forms to Enlarge Outdoor Service Area and Drop One Additional Bar Permit for a total of 3 bars.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Departments are recommending approval with zoning issues to be worked out.

Motion by Vice Mayor Gawron, second by Commissioner Carter to approve the Consent Agenda as read minus items C, D, and E.

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

Nays: None

MOTION PASSES

2011-15 ITEMS REMOVED FROM THE CONSENT AGENDA:

C. Amendment to the Zoning Ordinance – Medical Marihuana Facilities. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend Section 1500 (Principle Uses Permitted) of Article XV (I-2, General Industrial Districts) of the zoning ordinance to allow medical marihuana caregiver facilities as a principal use permitted in I-2, General Industrial Districts.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request at their February 10th meeting.

Motion by Commissioner Spataro, second by Commissioner Wierengo to approve the amendment to the zoning ordinance as presented regarding medical marihuana facilities.

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

Nays: Shepherd

MOTION PASSES – REQUIRES SECOND READING

D. Application for Special License (Liquor Control Commission). PUBLIC SAFETY

SUMMARY OF REQUEST: The Muskegon Museum of Art has submitted an application for a Special License for Beer, Wine and Spirits for Consumption on the Premises for the following events:

- Reception April 29, 2011
- Gala Dinner June 11, 2011
- Reception November 18, 2011

The Museum meets all of the requirements for the special license with the exception of the request for “spirits”. Commission policy dictates that any special license request which includes spirits must be considered and approved by the body.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff has no recommendation.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the application for special liquor license for the Muskegon Museum of Art but not include the request for spirits for consumption so that we are consistent with our other special liquor license requests.

ROLL VOTE: Ayes: Spataro

Nays: Warmington, Wierengo, Wisneski, Carter, Gawron, and Shepherd

MOTION FAILS

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the application for a special liquor license for the Muskegon Museum of Art which includes beer, wine and spirits.

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

Nays: None

MOTION PASSES

E. Request from Consumers Energy for Easements. ENGINEERING

SUMMARY OF REQUEST: Consumers Energy Company is seeking four easements from the City of Muskegon for its Muskegon-Cobb #1 and #2 line relocation projects. The project objective is to relocate five High Voltage Distribution lines that currently exist in the wetlands area East of Consumers Energy's Cobb Generation Plant, to a location out of a wetlands area. This is being done to facilitate access, which could reduce the size and duration of the outages, should an event in the area damage these lines. Access is currently limited, due to changing environmental restrictions.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: None.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the request from Consumers Energy for the Easements as described.

Motion by Commissioner Spataro, second by Commissioner Wierengo to amend motion to include the requirement for staff and attorney review before the Mayor and City Clerk sign the easements.

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

Nays: None

MOTION PASSES

2011-16 PUBLIC HEARINGS:

A. Request to Repeal Existing Historic Preservation Ordinance. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to repeal Chapter 38, Article II of the Code of Ordinances of the City of Muskegon. The ordinance will be replaced with an updated version.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To repeal the existing ordinance.

COMMITTEE RECOMMENDATION: The Historic District Commission recommended to repeal the current ordinance at their February 1st meeting.

The Public Hearing opened to hear and consider any comments from the public. No comments were made.

Motion by Commissioner Carter, second by Commissioner Spataro to close the Public Hearing and approve the request to repeal the existing historic preservation ordinance.

ROLL CALL: Ayes: Wisneski, Carter, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

MOTION PASSES

B. Request to Amend Chapter 38, Article III of the Code of Ordinances, Historic District Ordinance. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend Chapter 38, Article III of the City Code of Ordinances to approve a new historic preservation ordinance. The new ordinance will meet the State of Michigan Historic Preservation Office standards and make Muskegon historic district residents eligible for historic building restoration tax credits.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the proposed ordinance.

COMMITTEE RECOMMENDATION: The Historic District Commission recommended to approve the new historic district ordinance at their February 1st meeting.

The Public Hearing opened to hear and consider any comments from the public. No comments were made.

Motion by Commissioner Spataro, second by Commissioner Wierengo to close the Public Hearing and approve the request to amend Chapter 38, Article III of the Code of Ordinances, Historic District Ordinance.

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

Nays: None

MOTION PASSES

C. Amendment to the City Code of Ordinances – Medical Marihuana Regulation and Licensing. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend Chapter 34, Article IV of the Code of Ordinances to regulate and license certain aspects of medical marihuana cultivation, use and distribution.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the ordinance amendment.

The Public Hearing opened to hear and consider any comments from the public. Comments were heard from David Keenan, 4255 Squaw Creek Trail, Muskegon; Jarred Foster, 10954 Mt. Ash Avenue, Grand Rapids; and Attorney Kevin Wester and Derek Antol, Greater Michigan Compassion Club, 1504 Montgomery.

Motion by Commissioner Spataro, second by Commissioner Carter to close the Public Hearing and approve the amendment to the City Code of Ordinances regarding medical marihuana regulation and licensing.

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

Nays: Shepherd

MOTION PASSES – REQUIRES SECOND READING

D. Recommendation for Annual Renewal of Liquor Licenses. CITY CLERK

SUMMARY OF REQUEST: To adopt a resolution recommending non-renewal of those liquor license establishments who are in violation of Section 50-146 and 50-147 of the Code of Ordinances for the City of Muskegon. These establishments have been found to be in non-compliance with the City Code of Ordinances and renewal of their liquor licenses should not be recommended by the City Commission. If any of these establishments come into compliance by March 22, 2011, they will be removed from this resolution, and recommendation for their renewal will be forwarded to the Liquor Control Commission.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adoption of the resolution.

The Public Hearing opened to hear and consider any comments from the public. Comments were heard from Jennifer Osborn, 3125 Tule Street NW, Grand Rapids from CJ's on the Beach.

Motion by Commissioner Carter, second by Commissioner Spataro to close the Public Hearing and approve the recommendation as presented for annual renewal of liquor licenses.

ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Wierengo, Wisneski, Carter,

and Gawron

Nays: None

MOTION PASSES

2011-17 UNFINISHED BUSINESS:

A. SECOND READING: Amendment to the Zoning Ordinance – Outdoor Lighting. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend Section 2331 (Landscaping, Fencing, Walls, Screens and Lighting) of Article XXIII (General Provisions) of the zoning ordinance to modify the guidelines on outdoor lighting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their February 10th meeting.

Motion by Vice Mayor Gawron, second by Commissioner Wierengo to approve the amendment to the Zoning Ordinance affecting outdoor lighting.

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

Nays: None

MOTION PASSES

B. SECOND READING: Rezoning Request for the Property Located at 1221 W. Laketon Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to rezone the property at 1221 W. Laketon Avenue from RM-2, Medium Density Multiple Family Residential District to R-1, Single Family Residential District.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their February 10th meeting.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the rezoning request for the property located at 1221 W. Laketon Avenue from RM-2 to R-1.

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

Nays: Wisneski

MOTION PASSES

2011-18 NEW BUSINESS

A. Five-Year Consolidated Plan. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To allow CNS staff to publish a summary of the 2011–2016 City of Muskegon Five-year Consolidated Plan for citizen review for not less than 30 days. A public notice will solicit comments on our proposed plan.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: We are requesting to direct the CNS office to publish a summary of the 2011-2016 City of Muskegon Five-year Consolidated Plan.

Motion by Vice Mayor Gawron, second by Commissioner Carter to direct the CNS office to publish a summary of the 2011-2016 City of Muskegon Five-year Consolidated Plan.

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

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:31 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: March 22, 2011

SUBJECT: Lease Proposal for MACkiteboarding at Pere Marquette Park

SUMMARY OF REQUEST:

Staff is asking permission to enter into 3-year contractual agreement with Steve Negen of MACkiteboarding for a Kiteboard School and Shop in Pere Marquette Park at 1955 Beach Street (former old brown/brick beach house building by Filtration Plant).

FINANCIAL IMPACT:

Revenue will be \$2,500 per year for 2011, 2012 and 2013 contract years. Lessee also agrees to provide a Handicapped Restroom outside of building.

Previous 3 year contract revenue was \$2,500 per year for the 2008, 2009, and 2010 seasons.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve request.

COMMITTEE RECOMMENDATION:

MACkiteboarding Lease Proposal

Property :

1955 Beach St, Muskegon Mi

Rate: \$2,500 per year

Extra – Handicapped Portable Restroom outside of the building

Duration: 3 years

Steve Negen

President - MACkiteboarding

Date: March 22, 2011
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
Temple Street, Young to Laketon**

SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the reconstruction of Temple Street from Young to Laketon. And approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the TEDF- A (state funds) of \$139,003. The estimated total construction cost is \$175,000.

BUDGET ACTION REQUIRED:

None at this time as this project appears in the 2010/2011 budget (2nd reforecast)

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION _____

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

Moved by _____ and supported by _____

Commissioner _____ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **11-5111** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Temple Street between Young Ave. & Laketon Ave.** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **11-5111** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this _____ day of _____, 2011.

BY

Stephen J. Warmington, Mayor

ATTEST

Ann Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on _____, **2011**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Becker, City Clerk

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NON FED

	CAB	
Control Section		EDA 61522
Job Number		113064
Contract No.		11-5111

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 25, 2011, attached hereto and made a part hereof:

Reconstruction work along Temple Street from Young Street to Laketon Avenue; and 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(3)(a); Public Act of 1987, as amended, and is categorized as:

CATEGORY "A" 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 A shall be applied to the eligible items of the PROJECT COST up to an amount not to exceed the lesser of: (1) 80 percent of the approved and responsible low bid amount, or (2) \$139,003. 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, the final costs included in the grant, 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 \$139,003. The grant includes those activities of preliminary engineering, right-of-way acquisition, construction, and construction engineering related to the grant. 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 80 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. Upon completion of construction of the PROJECT, 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)(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.

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 1102 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:

By _____
Department Director MDOT

By _____
Title:



February 25, 2011

EXHIBIT I

CONTROL SECTION	EDA 61522
JOB NUMBER	113064

ESTIMATED COST

Estimated PROJECT COST

Contracted Work	\$175,000
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ESTIMATED COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$175,000
Less TED FUNDS*	<u>\$139,003</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ 35,997

NO DEPOSIT

*TED FUNDS for the PROJECT 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: March 22, 2011
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: City – MDOT Agreement for the reconstruction of:
Getty Street, Laketon to Evanston**

SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the reconstruction of Getty Street from Laketon to Evanston. And approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the TEDF-F (state funds) of \$375,000. The estimated total construction cost is \$1,000,000 which is different than what is shown in the agreement of \$525,000. The agreement figure of \$525,000 was based on a milling and resurfacing construction method which has since been deemed as not appropriate due to underground work among other reasons.

BUDGET ACTION REQUIRED:

Due to higher than originally anticipated required local match, it is likely the city need to issue MTF bonds for this and other grant funded street projects. A potential bond issue was included in the 2010/2011 budget but was deferred. This project, if approved, will be included in the 2011/2012 budget.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION _____

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

Moved by _____ and supported by _____

Commissioner _____ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **11-5108** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Getty Street between Laketon & Evanston** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **11-5108** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this _____ day of _____, 2011.

BY

Stephen J. Warmington, Mayor

ATTEST

Ann Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on _____, **2011**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Becker, City Clerk

TED (F)
NON FED

	CAB	
Control Section		EDF 61566
Job Number		110966
Contract No.		11-5108

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 25, 2011, attached hereto and made a part hereof:

Reconstruction work along Getty Street from Laketon Avenue to Evanston Street; and 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) 72 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 72 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. Upon completion of construction of the PROJECT, 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 530 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:

By _____
Department Director MDOT

By _____
Title:



February 25, 2011

EXHIBIT I

CONTROL SECTION	EDF 61566
JOB NUMBER	110966

ESTIMATED COST

Estimated PROJECT COST

Contracted Work	\$525,000
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ESTIMATED COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$525,000
Less TED FUNDS*	<u>\$375,000</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$150,000

NO DEPOSIT

*TED FUNDS for the PROJECT 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

City Commission Meeting
Tuesday March 22, 2011

TO: Honorable Mayor and City Commissioners

FROM: Anthony L. Kleibecker, Director of Public Safety

DATE: March 15, 2011

SUBJECT: Amend Chapter 30 of the Code of Ordinances-Fire Prevention

Summary of Request:

The Director of Public Safety is requesting that the City Commission amend Chapter 30 of the Code of Ordinances concerning Fire Prevention and Protection. This includes the adoption of the 2009 International Fire Code.

Financial Impact:

None

Budget Action Required:

None

Staff Recommendation:

Approval of the request.

City of Muskegon
Muskegon County, Michigan

ORDINANCE NO. _____

The City Commission of the City of Muskegon hereby ORDAINS:

Chapter 30 of the Code of Ordinances of the City of Muskegon concerning the Fire Prevention Code is amended, as follows:

1. Section 30-191 shall be amended to read as follows:

Adoption.

The city hereby adopts the *International Fire Code*, 2009 edition, including all appendices thereto, except for Appendix A which is not adopted, as published by the International Code Council, as the Fire Code of the City of Muskegon, in the State of Michigan. The International Fire Code regulates and governs the safeguarding of life and property from fire and explosion hazards arising from the occupancy of buildings and premises; provides for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions, and terms of the International Fire Code on file in the office of the City of Muskegon are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any prescribed in this ordinance. Copies of the International Fire Code are on file in the office of the City Clerk of the City of Muskegon, and the code is made a part hereof as if fully set forth in this article.

If any conflict exists between any provision in the International Fire Code and a provision in the Michigan Building Code, the Michigan Building Code, 2009 edition, shall prevail.

This ordinance adopted:

Ayes:

Nays:

Adoption Date:

Effective Date:

First Reading:

Second Reading:

CITY OF MUSKEGON

By: _____

Ann Marie Becker, 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 22nd day of March, 2011, 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 the minutes were kept and will be or have been made available as required thereby.

Dated: _____, 2011

Ann Marie Becker, MMC
City Clerk

Commission Meeting Date: March 8, 2011

*Needs
2nd Reading*

Date: February 25, 2011
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance – Medical Marihuana facilities

SUMMARY OF REQUEST:

Staff initiated request to amend Section 1500 (Principle Uses Permitted) of Article XV (I-2, General Industrial Districts) of the zoning ordinance to allow medical marihuana caregiver facilities as a principal use permitted in I-2, General Industrial Districts.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their 2/10 meeting.

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

February 10, 2011

Case 2011- 01: Staff initiated request to amend Section 1500 (Principle Uses Permitted) of Article XV (I-2, General Industrial Districts) of the zoning ordinance to allow medical marijuana caregiver facilities as a principal use permitted in I-2, General Industrial Districts.

BACKGROUND

1. The City Commission passed a sixth month moratorium on medical marijuana facilities on May 11, 2010. The moratorium was extended an additional 90 days on December 14, 2010. The moratorium will expire on March 14, 2011.
2. Staff from Planning, City Clerk, Police and the Managers Office have been working with city attorney John Schrier on developing the proposed ordinance.
3. Under the Michigan Medical Marijuana Act, qualifying patients may either grow their own product, up to 12 plants, or they may obtain it from a caregiver. Caregivers may have a maximum of 5 patients and are allowed to grow up to 12 plants per patient.
4. The proposed amendments would allow qualifying patients to grow their own at home without any involvement from the City. However, caregivers will only be allowed to grow in I-2, General Industrial Zones and must follow the licensing guidelines of the City. Caregivers will not be allowed to have signage.
5. Please see enclosed letter from John Schrier.

Ordinance Excerpt:

I-2 General Industrial

ARTICLE XV - I-2 GENERAL INDUSTRIAL DISTRICTS

PREAMBLE

The I-2 General Industrial Districts are established primarily for manufacturing, assembling, and fabrication activities including large scale or specialized industrial operations whose external physical effects may be felt to some degree by surrounding districts. The I-2 District is so structured as to permit, in addition to I-1 Light Industrial District uses, the manufacturing, processing and compounding of semi-finished or finished products from raw materials.

SECTION 1500: PRINCIPAL USES PERMITTED

In an I-2 General Industrial District, buildings and land may be used for one (1) or more of the following specified uses, unless otherwise provided in this Article.

1. Any Principal Use Permitted in the I-1 District, subject to the requirements of this District.

2. Primary metal industries, including foundries, smelting and refining of metal or alloys, rolling and extruding plants.
3. Chemical plants whose manufacturing process produce products which are not hazardous materials as defined in the Fire Code.
4. Paper and pulp manufacturing.
5. Power generating plants.
6. Junk yards and scrap metal processing.
7. Rubber manufacturing or the remanufacturing of rubber products.
8. Uses similar to the above principal uses.

SECTION 1501: SPECIAL LAND USES PERMITTED

The following uses, and their accessory buildings and accessory uses, shall be permitted as a special land use if it is found to meet the standards outlined in Section 2332 of this Ordinance, subject to applicable conditions imposed by Ordinance or other reasonable conditions imposed by the Planning Commission:

1. Any use with outside storage of aggregate, sand or other soil, or raw materials used in a manufacturing process such as brick, tile manufacturing plants, asphalt and cement batch plants.
2. Gasoline storage facilities.
3. Bulk storage or the production of acetylene, natural gas, and oxygen or other highly explosive or toxic gases. The storage of such gases for use in a production process or of an industry, business, or health care facility shall not be considered bulk storage.
4. Chemical plants whose manufacturing process produce products which are hazardous materials as defined in the Fire Code.
5. Wind Turbine Facilities [10/09].
6. Uses similar to the above Special Land uses.

NEW LANGUAGE

Deletions are ~~crossed-out~~ and additions are in **bold**:

Amendment to Section 1500 (Principle Uses Permitted) of Article XV (I-2, General Industrial Districts).

- 8. Medical marihuana caregiver facilities to the extent licensed pursuant to City Code Sections 34-101 through 34-107.**

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 1500 of Article XV which provides for principal uses permitted in I-2 General Industrial Districts.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

Deletions are ~~crossed-out~~ and additions are in **bold**:

SECTION 1500: PRINCIPAL USES PERMITTED

In an I-2 General Industrial District, buildings and land may be used for one (1) or more of the following specified uses, unless otherwise provided in this Article.

1. Any Principal Use Permitted in the I-1 District, subject to the requirements of this District.
2. Primary metal industries, including foundries, smelting and refining of metal or alloys, rolling and extruding plants.
3. Chemical plants whose manufacturing process produce products which are not hazardous materials as defined in the Fire Code.
4. Paper and pulp manufacturing.
5. Power generating plants.
6. Junk yards and scrap metal processing.
7. Rubber manufacturing or remanufacturing of rubber products.
8. **Medical marihuana caregiver facilities to the extent licensed pursuant to City Code Sections 34-101 through 34-107.**
9. Uses similar to the above principal uses.

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Marie Becker, MNC, 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 ____ day of _____, 201_, 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 the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2008, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 201_.

Ann Marie Becker, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 8, 2011, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1500 (Principle Uses Permitted) of Article XV (I-2, General Industrial Districts) of the zoning ordinance to allow medical marihuana caregiver facilities as a principal use permitted in I-2, General Industrial Districts. 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 _____, 2011.

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

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

Account No. 101-80400-5354

*Needs
2nd Reading*

Commission Meeting Date: March 8, 2011

Date: February 25, 2011
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *UBC*
**RE: Amendment to the City Code of Ordinances –
Medical Marihuana Regulation and Licensing**

SUMMARY OF REQUEST:

Staff initiated request to Chapter 34, Article IV of the Code of Ordinances to regulate and license certain aspects of medical marihuana cultivation, use and distribution.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the ordinance amendment.

COMMITTEE RECOMMENDATION:

None

MEDICAL MARIHUANA CAREGIVER FACILITY REGISTRATION FORM

Business Address: _____

Reason for Review:

New License ☐

Transfer Location ☐

Renewal ☐

Other _____

Deadline for receipt of all information: _____

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Compliance ☐ Remaining Defects _____
Services

By signing this form I acknowledge that I have received a copy, read,
and am in compliance with the City of Muskegon's Medical Marihuana
Caregiver Facility Ordinance

Applicant Signature _____

Date _____

Ann Marie Becker, MMC City Clerk
License Coordinator

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan is amended by adding sections 34-101 through 34-115 to read as follows:

ARTICLE IV. MEDICAL MARIHUANA¹

**ORDINANCE TO REGULATE AND LICENSE CERTAIN ASPECTS OF MEDICAL
MARIHUANA CULTIVATION, USE AND DISTRIBUTION**

34-101. INTENT

It is the intent of this ordinance to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421, et seq, (the Act) as approved by the electors, and not to determine and establish an altered policy with regard to marihuana. The act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marihuana amount to criminal acts. It is the further intent of this ordinance to protect the public health, safety, and general welfare of persons and property, and to license certain locations as specified below. It is the further intent of this ordinance to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this ordinance. This ordinance is designed to recognize the fundamental intent of the Act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marihuana for medical purposes; and to regulate around this fundamental intent in a manner that does not

¹ Marihuana is spelled with an "h" and not a "j" throughout the Michigan Medical Marihuana Act and, as such, shall be spelled that way in this Ordinance.

conflict with the Act so as to address issues that would otherwise expose the community and its residents to significant adverse conditions, including the following: adverse and long-term influence on children; substantial serious criminal activity; danger of law enforcement and other members of the public; discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marihuana; the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution, and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and, the uninspected installation of plumbing and electrical facilities that create dangerous health, safety, and fire conditions.

This ordinance permits authorizations for activity based on the Act. Nothing in this ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana not in strict accordance with the express authorizations of the Act and this ordinance; and, nothing in this ordinance shall be construed to undermine or provide immunity from federal law or state law as it may be enforced by the federal or state government relative to the cultivation, distribution, or use of marihuana. Thus, the authorization of activity, and the approval of a license under this ordinance shall not have the effect of superseding or nullifying federal or state law applicable to the cultivation, use, and possession of marihuana, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.

34-102. DEFINITIONS

- (a) *Act* means Initiated Law of 2008, MCL 333.26421, et seq., and Michigan Administrative Rules, R 333.101, et seq.
- (b) *Department* means the State of Michigan Department of Community Health.
- (c) *Qualifying patient* or *patient* means a person as defined under MCL 333.26423(h) of the Act.
- (d) *Primary caregiver* or *caregiver* means a person as defined under MCL 333.26423(g) of the Act, and who has been issued and possesses a Registry Identification Card under the Act.
- (e) *Registry Identification Card* means the document defined under MCL 333.26423(i) of the Act.
- (f) *Distribution* means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

- (g) *Distributor* means any person, including but not limited to a caregiver, patient or any other person, who engages in any one or more acts of Distribution.
- (h) *Facility* or *Premises* means one commercial business premises having a separate or independent postal address, one private office premises having a separate or independent postal address, one single family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one free-standing industrial building having a separate or independent postal address.
- (i) *Marihuana* means the substance or material defined in section 7106 of the public health code, 1976 PA 368, MCL 333.7106.
- (j) *Principal residence* means the place where a person resides more than half of the calendar year.
- (k) *Dispensary*, including marihuana stores, compassion clubs, compassion centers, and medical marihuana businesses, means an entity or facility that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, or dispenses marihuana, other than in a one-to-one relationship between a caregiver and a qualified patient, as designated by the Act.

34-103. FINDINGS AND DECLARATION OF FACTS

The restrictions in the Medical Marihuana ordinance are based on the following findings:

- 1) Law enforcement officers are required to investigate and pursue prosecution with regard to the *unlawful* cultivation, distribution or consumption of marihuana. Yet, the Act concurrently authorizes as lawful undertakings the same actions by those who meet the terms of the Act. Although this places a burden on law enforcement to make a distinction relating to very similar conduct, the Act expressly denies law enforcement officials advanced access to the identity and location of those authorized to lawfully engage in the cultivation, distribution or consumption of marihuana – critical information needed to distinguish unlawful undertakings from lawful ones, particularly at critical investigatory stages. The experience of law enforcement dictates that the presence of significant quantities of unlawful controlled substances are often accompanied by large quantities of cash, and by weapons used to protect the controlled substances and cash. Thus, confrontations between law enforcement and persons engaged in unlawful drug enterprises can be extremely dangerous, and there is a need to use the element of surprise in order to protect the lives of officers and members of the public. Under the Act, before the occurrence of a direct confrontation between law enforcement and persons engaged in cultivation and distribution of marihuana, law enforcement

officers are prevented from securing the information necessary to determine whether such activities are being conducted by persons authorized under the Act or by persons engaged in criminal enterprise. This in turn leads to the condition that, if there is a suspicion that an unlawful enterprise is being perpetrated, officers may need to seek a voluntary entry into premises, and may be met by a weapons-based confrontation without being permitted to utilize the element of surprise. Moreover, if an unlawful enterprise is not involved, substantial resources can easily be expended by law enforcement on a baseless investigation. Accordingly, the licensure of a particular Facility as the site of cultivation and distribution, which need not undermine the privacy and confidentiality of the patient-caregiver relationship, could be critical to law enforcement in order to identify and distinguish sites of lawful activity from sites of unlawful activity.

- 2) The experience in the State of California, a state that approved the medical use of marihuana more than a decade ago, is that concentrations of marihuana distribution activity lead to the following significant and serious secondary effects:

i. California law enforcement reported in 2009, that nonresidents in pursuit of marihuana, and out of area criminals in search of prey, are commonly encountered just outside marihuana dispensaries, as well as drug-related offenses in the vicinity – like resales of products just obtained inside – since these marihuana centers regularly attract marihuana growers, drug users, and drug traffickers. Sharing just purchased marihuana outside dispensaries also regularly takes place. There have been increased incidents of crime including murder and armed robbery.

ii. In a 2009 California law enforcement presentation, referring again to the existence of a concentration of distribution activities, the Los Angeles Police Department reported:

- (1) 200% increase in robberies,
- (2) 52.2% increase in burglaries,
- (3) 57.1% rise in aggravated assaults,
- (4) 130.8% rise in burglaries from autos near cannabis clubs in Los Angeles.
- (5) Use of armed gang members as armed “security guards”.

iii. California law enforcement reported in 2009 that the dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money.

iv. California law enforcement reported in 2009 that besides fueling marihuana dispensaries, some monetary proceeds from the sale of harvested marihuana derived from plants grown inside houses are being

used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.

v. California law enforcement reported in 2009 that other adverse secondary impacts from the operation of marihuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marihuana to arriving patrons; marihuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marihuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries.

- 3) Children should not be encouraged by example to undertake uses and activities which are unlawful. However, considering that marihuana possession and use is a generally prohibited criminal activity, but the Act authorizes an undisclosed group of individuals to possess and use marihuana, and because children are not capable of making distinctions between lawful and unlawful use and possession by individuals based upon the intricacies of the Act, there is a need to insulate children from the narrowly permitted use and possession activity permitted under the Act. California law enforcement reported in 2009 that minors exposed to marihuana at dispensaries or residences where marihuana plants are grown may be subtly influenced to regard it as a generally legal drug.
- 4) The Act requires that information concerning identity and location of caregivers is to be confidential, and that caregivers authorized under the Act are not to be punished. However, the Act does not expressly or implicitly specify an intent to pre-empt all local enforcement efforts. Analogously, persons performing in adult entertainment have been held to be engaged in activity involving free expression, protected under the First Amendment, and thus direct local regulation that restricts such activity has been deemed to be prohibited content restriction of free speech. Nonetheless, where it can be shown that there are adverse secondary effects that result from the adult entertainment establishments (and other related adult uses), including criminal activity closely associated with that reported above in connection with concentrations of medical marihuana Distribution, reasonable regulation, and requirements for the locations of adult entertainment uses have been permitted under the First Amendment, and have been authorized in order to mitigate against the secondary effects.
- 5) Considering the reports from California, and based upon the limited experience already reported in Michigan, it is found that there is a rational basis for concern that a concentration of Distribution activities, conduct that would be criminal outside the narrow exception provided in the Act, will have adverse secondary effects, particularly where law enforcement personnel have no information to distinguish lawful from unlawful activities at the scene of such activities.

Therefore, it is the intent of this ordinance to regulate Distribution activities in order to mitigate the reasonably anticipated adverse secondary effects.

- 6) Local regulation of Distribution activities is implicitly contemplated under the Act in view of the glaring gaps opened by the terms of the Act which would, absent local regulation, render it impossible for law enforcement to investigate and pursue criminal activity not protected by the Act. By way of example:
 - i. While the Act limits a caregiver from distributing marihuana to more than five patients, because the Act withholds direct advanced information that would allow a connection to be made by law enforcement between a caregiver and particular patients, especially if caregivers operate in the same facility or in close proximity, the five-patient limit upon a person acting as a caregiver would be practically impossible to investigate or enforce.
 - ii. While the Act limits the number of plants a caregiver may cultivate on behalf of patients, because the Act withholds direct advanced information that would allow a connection to be made by law enforcement between a caregiver and particular grow locations, the limitation on the number of plants cultivated at multiple sites would be practically impossible to investigate and enforce.
- 7) The inability of law enforcement officials to access relevant and often critical information concerning those cultivating, distributing and consuming marihuana amounts to a material barrier to the effective investigation/enforcement model. Without critical information to distinguish those operating under the Act from those engaged in illegal trafficking, law enforcement is impeded in the effort of undertaking adequate operational planning, and this, in turn, exposes law enforcement, and innocent third parties, to substantial and unnecessary risks.
- 8) Absent the requirement for an application and inspection of a premises at which substantial facilities have been installed to facilitate the cultivation of marihuana plants, including plumbing and electrical inspections, there have been reports that unauthorized installations relating to the cultivation of marihuana plants have been made, including unauthorized power lines that by-pass meters. These installations create a threat to public safety, and result in a fire risk.
- 9) The fundamental intent of the Act is the creation of a private and confidential patient-caregiver relationship to facilitate the lawful cultivation, distribution, and use of marihuana strictly for medical purposes.
- 10) The requirement to identify sites at which marihuana is cultivated for and distributed to others, while not requiring identification of names, is not in conflict with the terms of the act, and is deemed to be the minimum requirement necessary

in order to protect the public and permit safe and effective enforcement of the act and the general laws relating to marihuana.

34-104. DISTRIBUTION CENTERS; PROHIBITION

The cultivation, distribution and use of marihuana, except as permitted by qualifying patients or caregivers, is prohibited.

34-105. QUALIFYING PATIENT

The cultivation of marihuana by a qualifying patient shall be permitted with no licensing requirement by the City. The cultivation shall be limited to the permitted under the Act. The distribution of marihuana by a qualified patient is prohibited.

34-106. CAREGIVER; REQUIREMENT FOR LICENSE

The cultivation of marihuana by a caregiver under the Act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the Act. No cultivation, distribution and other assistance to patients shall be lawful in this community at a location unless and until such location for such cultivation, distribution, and assistance shall have been licensed under this ordinance. Licensure shall be subject to and in accordance with the following:

- a) The location of a Facility used for the cultivation of marihuana by caregivers under the Act shall comply with the City's zoning ordinance;
- b) The location of a Facility used to provide any other assistance to patients by caregivers permitted under the Act relating to medical marihuana shall comply with the City's zoning ordinance.

34-107. CAREGIVER; APPLICATION FOR LICENSE

The requirement of this ordinance is to license a location, and not to license persons. A confidential application for a license under this section shall be submitted to the City Clerk, and shall conform to the following specifications. An application shall:

- i. Not require the name, home address, or date of birth of a patient or caregiver.
- ii. Include the address and legal description of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana. The fact that a caregiver has an

ID Card as a patient shall not relieve the obligation to provide this information.

- iii. Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building; precise measurements in feet, of the floor dimensions and height; the security device for the facility.
- iv. Describe all locations in the premises where a caregiver authorized under the Act shall render assistance to a qualifying patient.
- v. Specify the number of patients to be assisted, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time. If the location at which patients will be assisted is different from the licensed premises, the application shall provide the address of all such other locations (other than the address of a patient being assisted).
- vi. For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants as such specifications relate to the need for the installation of facilities.

34-108. CAREGIVER; REQUIREMENTS AND STANDARDS FOR APPROVAL OF LICENSURE AND ACTIVITY PERMITTED.

- (a) Locations used for the cultivation of marihuana by caregivers under the Act, and the location used for the provision of assistance to patients by caregivers, but in all events not including a patient's principal residence which is not used to cultivate marihuana or assist in the use of medical marihuana for persons other than the patient at such residence, shall be prohibited:
 - (1) Within 1,000 feet from sites where children are regularly present, and specifically: a daycare facility, a church, synagogue, mosque, or other religious temple, and from a recreational park and a public community center, a public or private pre-school, elementary school, middle school, high school, community college, and all other schools that have different name references but serve students of the same age. Measurements for purposes of this sub-section

shall be made from property boundary to property boundary; and

- (2) On any property which is not zoned I-2 pursuant to the City Zoning Ordinance.
- (b) The location of the Facility at which a caregiver cultivates marihuana, or assists a patient in the use of marihuana shall not be the same facility at which any other caregiver cultivates marihuana or assists a patient in the use of marihuana. Accordingly, at a patient's principal residence used by such patient to cultivate marihuana for his or her personal use as permitted under the Act, there shall be not more than twelve marihuana plants being cultivated at any one time; only at a licensed Facility may there be more than twelve marihuana plants being cultivated at any one time; and, at a Facility at which a caregiver cultivates marihuana for use by patients, there shall not be more than twelve marihuana plants being cultivated at any one time per patient, and in no event more than sixty marihuana plants being cultivated at any one time (which assumes cultivation for five patients, plus an additional twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).
- (c) In order to insulate children and other vulnerable individuals from such actions, all medical marihuana cultivation, and all assistance of a patient in the use of medical marihuana by a caregiver, shall occur within the confines of a building licensed under this section, and such activities shall occur only in locations not visible to the public and adjoining uses, provided, this subsection shall not prohibit a caregiver from assisting a patient at the patient's principal residence or at a hospital.
- (d) The electrical and plumbing inspectors (and other inspector(s) within whose expertise an inspection is needed) must, after inspection, provide a report confirming that all lights, plumbing, equipment, and all other means proposed to be used to facilitate the growth or cultivation of marihuana plants is in accordance with applicable code.
- (e) Considering that the distribution of marihuana is generally unlawful, and that the Act authorizes "caregivers" and does not authorize any activity such as a "dispensary," and reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver is known to patients. Accordingly:
 - (1) There shall be no signage identifying a caregiver use or a place at which medical marihuana is distributed; and

- (2) Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a “clinic,” “hospital,” “dispensary,” or other name customary ascribed to a multi-patient professional practice.

34-109. CAREGIVERS; OTHER CONDITIONS.

An approval of licensure may include reasonable conditions requested in writing by the applicant during the application and review process.

34-110. LAND USE RESTRICTION

If approved, all use of property shall be in accordance with an approved application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

34-111. EXISTING MEDICAL MARIHUANA FACILITIES

A Medical Marihuana Facility that exists on the effective date of this ordinance must make application for and receive approval to continue to operate; provided, an application shall be filed within fifteen days following the effective date of this ordinance. If an application for licensure under this ordinance is denied due to the minimum distance requirement standards, and a timely application has been filed seeking licensure under this ordinance, such Facility shall have sixty days from the date of application denial to cease operating at the denied site.

34-112. RESTRICTION ON DISTRIBUTION

- (a). The restrictions in this Chapter are based on the following findings:
 - 1) The Act was passed by the initiative process. The ballot containing the proposal did not include, and as a practical matter could not have included the full statute. Thus, electors approved the initiative proposal based upon a reading of a mere summary of the Act. Both the summary and the Act as a whole reflect the intent to a private and confidential patient-caregiver relationship to facilitate the lawful cultivation, distribution, and use of marihuana strictly for medical purposes, that is, an authorization for confidential and private use of marihuana by patients, and for confidential and private assistance in such use by caregivers with whom individual patients are connected through the Department’s registration process. That is, the Act does not authorize the broad legalization of the cultivation, distribution, or use of marihuana, and a reading that permits such broad legalization is inconsistent with the fundamental intent of the Act read as a whole in context with generally applicable Michigan law. Thus, it would

be reasonable to expect and require that all undertakings of caregivers and other persons in assisting a patient are intended to occur on a confidential and private one-to-one basis.

- 2) The Act does not reflect the intent for distributions of marihuana by more than one caregiver or other person to one patient, or by one or more caregivers or other persons to more than one patient at any given time and place.
- 3) The confidentiality provisions of the Act reflect the intent for all caregivers and patients to remain anonymous in terms of their name and address, thus further reflecting the private and confidential nature of the activities contemplated between a caregiver and the patient he or she is assisting.

(b). Restrictions

A caregiver shall distribute medical marihuana only on a confidential, one-to-one, basis with no other caregiver being present at the same Facility at the same time, and no other patient or other person being present at the same Facility at the same time, provided, that a patient's immediate family members or guardian may be present within the patient's private residence, and one family member or guardian may be present in any Facility other than the patient's private residence. For purposes of this subsection, the phrase "same time" shall mean and include concurrently as well as within a time interval of one hour.

34-113. PENALTY FOR VIOLATION

All violations of Sections 34-101 through 34-112 are declared to be civil infractions and subject to penalties pursuant to Section 1-7.

34-114. NO VESTED RIGHTS

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment of this ordinance.

2. This Ordinance is to become effective ten (10) days after adoption.

Ayes:

Nays:

First Reading:

Second Reading:

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 ____ day of _____, 2011, at which meeting a quorum was present and remained throughout, and 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.

Date: _____, 2011

Ann Marie Becker, MMC
City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on March 22, 2011, the City Commission of the City of Muskegon adopted Chapter 34, Sections 34-101 through 34-114 of the Muskegon City Code concerning Medical Marihuana Regulation and Licensing, summarized as follows:

1. Section 34-101 articulates the Intent of the Ordinance to Regulate and License Certain Aspects of Medical Marihuana Cultivation, Use and Distribution.
2. Section 34-102 provides the definitions of various terms used in the Ordinance to Regulate and License Certain Aspects of Medical Marihuana Cultivation, Use and Distribution.
3. Section 34-103 provides the Findings and Declaration of Facts which are the basis for the Ordinance to Regulate and License Certain Aspects of Medical Marihuana Cultivation, Use and Distribution.
4. Section 34-104 prohibits distribution centers.
5. Section 34-105 permits the cultivation of marihuana by a qualified patient, with no licensing requirement. Distribution of marihuana by a qualified patient is prohibited.
6. Section 34-106 permits caregivers, pursuant to a City of Muskegon license, to cultivate and distribute marihuana to a qualified patient pursuant state law.
7. Section 34-107 provides the application process for obtaining permission to act as a caregiver in the City of Muskegon.
8. Section 34-108 establishes the requirements and standards for approval of licensure and activity permitted by a caregiver.
9. Section 34-109 permits establishing other conditions for caregivers.
10. Section 34-110 establishes land use restrictions relating to medical marihuana.
11. Section 34-111 provides a process for existing medical marihuana facilities to comply with City ordinances or a period of time to cease operating.
12. Section 34-112 provides restrictions on the distribution of marihuana.
13. Section 34-113 provides the penalty for violating the Ordinance to Regulate and License Certain Aspects of Medical Marihuana Cultivation, Use and Distribution.

14. Section 34-114 provides that property owners do not have a vested right or legal non-conforming right to fail to comply with the Ordinance to Regulate and License Certain Aspects of Medical Marihuana Cultivation, Use and Distribution.

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 (10) days from the date of this publication.

Published: _____, 2011

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Date: March 22, 2011

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: Contract for Assessing Services

SUMMARY OF REQUEST: Since 1999, the City has contracted with the Muskegon County Equalization Department for assessing services. The closure of the Sappi plant together with general tax base loss changed the City's required assessor status from *Level IV* to *Level III*. This caused staff to explore whether taking the assessing function back in-house might be cost effective. However, after in-depth discussions with the County, we have reached a new five-year agreement that continues the current intergovernmental service model while achieving the City's cost goals. The proposed agreement is presented here for your consideration.

FINANCIAL IMPACT: The base cost for the proposed contract is \$344,367 with yearly adjustments based on the growth (decline) in the City's taxable value. The base cost for the current contract is \$459,300.

BUDGET ACTION REQUIRED: Agreed to costs for assessing services will be included in the forthcoming 2011-12 budget. The City will see reduced costs for the last quarter of the 2010-11 fiscal year which will be incorporated in the upcoming budget reforecast.

STAFF RECOMMENDATION: Authorize staff to execute documents with Muskegon County for continued provision of assessing services.

COMMITTEE RECOMMENDATION: None.

**AGREEMENT BETWEEN THE CITY OF MUSKEGON
AND
MUSKEGON COUNTY BOARD OF COMMISSIONERS**

THIS AGREEMENT, entered into as of the first day of April 2011, between the City of Muskegon, a municipal corporation, by its City Commission, hereinafter referred to as "Municipality", and the County of Muskegon, by its Board of Commissioners, hereinafter referred to as the "County", is as follows:

PURPOSE

The purpose of this Agreement is to provide for a property assessment administration program to be administered by the County Equalization Director, or designated representative, which will list, appraise, and maintain a complete set of records for all real and personal property, subject to ad valorem taxation, specific taxes, in-lieu-of tax agreements within the Corporate limits of the Municipality, pursuant to Public Act No. 160 of 1972.

TERM AND TERMINATION

The agreement shall commence April 1 of 2011, and terminate March 31, 2016, provided that either party may terminate the Agreement on March 31 of each year upon one year prior written notice. The notice shall be sent by certified mail to the County Equalization Director if terminated by the Municipality. The notice shall be sent by certified mail to the City Manager if terminated by the County.

I. The County agrees to perform the services and provide the materials set forth herein.

A. **SCOPE OF SERVICE** – To classify and appraise, according to the constitution and laws of the State of Michigan, each parcel of real property within the confines of the Municipality and process all assessable personal property that is in the Municipality, and use the methods prescribed by the Michigan State Tax Commission. The Equalization Department will provide an assessment roll that will equal the tentative State Equalized Values for each classification of property. The final factor will be determined by the action of the Municipality's Board of Review and the process of state equalization as determined by the State Tax Commission. Exhibit A outlines the full scope of services provided to the City.

B. **QUALIFIED STAFF** - All County employees engaged in the performance of this Agreement shall be professional in manner and appearance, and be trained in property appraisal techniques. The assessor shall be certified by the State Tax Commission, as required for the Municipality's size and State Equalized Value.

C. **EQUIPMENT AND SUPPLIES** - The County will provide all equipment and supplies needed for the routine performance of its duties without additional expenses, except as otherwise set forth herein.

D. **Maps and Records** – The Municipality shall provide current land use maps, zoning maps, and shall make available any records or data which may be of use in making the appraisal, without cost to the County. The County has implemented a GIS system in which mapping data is maintained. The GIS system is addressed in sub-point “M” of this agreement.

E. **APPRAISAL MANUALS/SCHEDULES** - The current Michigan State Tax Commission Assessor’s Manuals shall be the cost schedules used in the appraisal of all properties. All cost schedules shall be indexed to reflect current costs as of Tax Day.

F. **RECORD CARDS** - The County will maintain the master file at a specified location. The master file shall become the property of the Municipality when delivered.

G. **PUBLIC RELATIONS** – Both parties recognize that good public relations are vital to the success of the assessment administration program. During the terms of this Agreement, County employees shall endeavor to promote understanding and amicable relations with all members of the public. County Staff will be assigned by the Equalization Director to report at the designated Municipal Building when necessary to conduct their duties, interact with Municipal Staff, attend meetings, and promote community relations.

H. **PROPERTY OWNER NOTIFICATION AND OFFICIAL STATEMENTS** – It shall be the responsibility of the County to notify all property owners annually of assessed and taxable values, as provided by law, whether values increase or decrease, as well as distribute personal property statements and other official forms.

I. **ASSESSMENT ROLL** - The County shall prepare the assessment roll and certify the same for the Municipality in a timely manner.

J. **BOARD OF REVIEW** - County Staff will advise and assist the Municipality’s Board of Review in preparing for, conducting, and implementing any changes resulting from the required meeting of the Board.

K. **APPEALS AND OTHER FUNCTIONS** - The County Equalization Director or designated representative shall represent the Municipality in all property assessment appeals and in proceedings before the Tax Tribunal concerning properties under this Agreement. The Municipality shall designate and provide the legal services for such appeals or proceedings filed during the existence of this agreement; however, costs or expenses which may be incurred by the County in employing additional counsel, expert appraisers, or performing extraordinary specific appraisal work in connection with such appeals, proceedings, or other functions shall be paid by the Municipality provided that the Equalization Director

seeks and obtains approval from the Municipality prior to incurring such costs or expenses. Any counsel retained to handle appeals shall work under the direction of the Equalization Director. Additionally, should either party terminate this agreement, the County or designated representative shall represent the Municipality in all property assessment appeals and in proceedings filed during the existence of this agreement. The fee shall be \$75.00 per hour for preparation, appearance, and travel after termination of the agreement. The fee should be multiplied by the current year's Inflation Multiplier (as determined by the Consumer Price Index,) effective October 1, 2011, and adjusted annually in this manner on this date for every year thereafter.

L. COMPUTERIZED APPRAISALS AND INFORMATION TECHNOLOGY – The County will provide staff, equipment, and software to maintain electronic property records using a computer assisted mass appraisal system. Assessment administration, including digital photography and sketching, as well as general business application software shall be supplied by the County. All property information shall adhere to the requirements of the County Wide Area Network and its specifications. The records will be utilized for annual valuation updates. The County may request the assistance of designated staff of the Municipality to determine proper neighborhoods for market value determinations. The County will ensure that the assessment records reflect the property's true cash value, assessed valuation, and taxable valuation to be utilized for any property tax calculations in accordance with applicable General Property Tax Law requirements. The computer assisted mass appraisal system and its attributes shall become the property of the Municipality upon termination of this agreement.

Additionally, the County and The Municipality shall participate in an electronic building permit system that will transfer such data to the computer aided assessment administration system without modification or hesitation. The system and its attributes shall be determined by the County.

M. Geographical Information Systems – The County and The Municipality have implemented a geographical information system. An independent formal mutual agreement governs this function.

N. SPECIAL ASSESSMENTS - Special assessment benefit analyses, roll preparation, processing, and related reports will be provided by the County when formally requested. The fee shall be \$75.00 per hour. The fee should be multiplied by the current year's Inflation Rate Multiplier (as determined by the Consumer Price Index,) effective October 1, 2011, and adjusted annually in this manner on this date for every year thereafter.

O. RECORDS MAINTENANCE AND ACCESS – The County agrees to maintain records with the most current information the County has available.

1. All changes in property ownership will be recorded in the assessment records within thirty days of being filed with the Muskegon County

Register of Deeds unless incomplete property documentation prevents timely recording. In these cases, the Equalization Department will strive to get complete accurate ownership information recorded as quickly as practical.

2. City staff will be afforded full access to assessment records (including photographs).

–II. The County will perform all the above services for the Municipality, subject to fees and expenses set forth and under the terms and conditions herein:

A. **FEES** - For each year of this agreement the annual fee shall be calculated in the following manner: The fee for the base year, which is from April 1, 2011 to March 31, 2012, shall be \$344,367.00 (base annual fee). The base Annual Fee of \$344,367.00 shall be multiplied by the Growth Index effective, and annually on April 1 for every year throughout the term of this agreement. The Growth Index is determined by dividing the Municipality's current year aggregate taxable value by the Municipality's previous year's aggregate taxable value as published in the Equalization Report. The index shall be compounded annually.

B. **PAYMENTS** - The Municipality shall remit the annual fee in equal quarterly payments.

C. **RELATIONSHIP OF THE PARTIES** – The parties acknowledge that the agreement between the County and The Municipality is one of an independent contractor. Neither of the parties should represent that an employment relationship is created or exists with regards to the employees of the other. This independent contractor relationship shall be given its full scope and intent including without limitation as it pertains to liability, wages, benefits, and taxation.

VI. **MISCELLANEOUS**

A. **SECTION HEADINGS** - The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

B. **SEVERABILITY** - If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

C. **ENTIRE AGREEMENT AND AMENDMENT** - In conjunction with matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character

or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreements, course of conduct, waiver or estoppel.

D. **SUCCESSORS AND ASIGNS** - All representations, covenants, and warranties set forth in the Agreement by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

E. **TERMS AND CONDITIONS** - The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

F. **EXECUTION OF COUNTERPARTS** - This Agreement may be executed in any number of counterparts and each such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

ACKNOWLEDGEMENTS

By: _____
Steve Warmington

Its: Mayor

By: _____
Ann Marie Becker

Its: City Clerk

Approved as to Form:

John C. Schrier, City Attorney

County of Muskegon:

By: _____
Kenneth Mahoney

Its: Chairman Board of Commissioners

By: _____
Nancy A. Waters

Its: Clerk

Approved as to Form:

Theodore Williams, Corporate Counsel

Exhibit A – Scope of Services

1. Muskegon County Equalization shall prepare annually by July 15 of each year a TIFA/LDFA report.
2. Muskegon County Equalization shall furnish the City of Muskegon a copy of the Equalization Report following adoption by the County Board of Commissioners.
3. Muskegon County Equalization will maintain records for the City of Muskegon that are in substantial compliance with state law - which includes the ability to pass a 14 point review or mini review (Please see attached forms – STC Form 4557 and Certification Statement).

Review of Local Unit Assessment Administration Practices, Procedures and Records

MICHIGAN STATE TAX COMMISSION

☐ Random Review

☐ Follow Up Review

☐ Ordered Review

UNIT: **COUNTY:**

YEAR:

YEAR OF ORIGINAL REVIEW (FOLLOW-UP REVIEW):

Score:

Name of Township Supervisor/City Manager/Mayor:

Name of Assessing Officer:

SAB Certification No.:

SAB Certification Level:

Required Unit Level:

1% Administration Fee added to tax collection: ☐ Yes ☐ No

Notes:

1a. On what date was the assessment roll certified by the above identified assessing officer?

General Law Date:

Charter Date:

Date:

Notes:

1b. On what date did the assessing officer deliver the certified assessment roll (original hard copy) to the local Board of Review for its required March meetings?

General Law Date:

Charter Date:

Date:

Notes:

2a. On what date was the assessment roll certified by the local Board of Review?

Date:

Notes:

2b. Did the local Board of Review utilize State Tax Commission form L-4035 (or equivalent)?

☐ Yes ☐ No

Notes:

2c. Did the secretary of the local Board of Review utilize State Tax Commission form L-4035a to document valuation changes authorized by the board?

☐ Yes ☐ No

Notes:

2d. Did the local unit Board of Review prepare minutes of the meetings and actions authorized by the local Board of Review and file the minutes with the local unit clerk (MCL 211.33)?

March BOR Session	☐ Yes	☐ No
July BOR Session	☐ Yes	☐ No
December BOR Session	☐ Yes	☐ No

Notes:

2e. Is the Board of Review in substantial compliance with the requirements of the GPTA (MCL 211.10f, MCL 211.33, R209.28(4))?

March BOR Session	☐ Yes	☐ No
July BOR Session	☐ Yes	☐ No
December BOR Session	☐ Yes	☐ No

Notes:

2f. On what date did the local unit/Board of Review Close?

March BOR Session

July BOR Session

Statutory Date

December BOR Session

Statutory Date

Notes:

3a. On what date was the certified copy of the assessment roll delivered to the county equalization department?

Date:

Notes:

3b. On what date did the assessing officer deliver State Tax Commission form L-4021 to the county equalization department?

Date:

☐ Original Hard Copy ☐ Electronic/Magnetic File Transfer

Notes:

3c. On what date did the assessing officer deliver State Tax Commission form L-4022 to the county equalization department?

Date:

☐ Original Hard Copy ☐ Electronic/Magnetic File Transfer

Notes:

3d. On what date did the assessing officer deliver a complete State Tax Commission form L-4025 (all property) to the county equalization department?

Date:

Notes:

4. Does the local unit have a printed copy of the 2003 Assessor's Manual for review by the taxpayers and a copy of the manual actually used to make the assessments?

☐ Yes ☐ No

Notes:

5. MCL 211.10e Requirements – Pursuant to MCL 211.10e, please identify which of the following assessors' manuals is utilized by the local unit assessing officer:

- ☐ a) Michigan Assessors Manual, 1998 Cost Tables
- ☐ b) Michigan Assessors Manual, 2003 Cost Tables
- ☐ c) Other (specify):

6. MCL 211.10e Requirements – Pursuant to MCL 211.10e, please identify which of the following assessment records are utilized and maintained by the local assessing officer:

- ☐ a) Appraisal record card system
- ☐ b) Personal property record system
- ☐ c) Tax maps
- ☐ d) Land value determination (maps grids, tables and analysis)
- ☐ e) ECF determinations
- ☐ f) Current year printed copy of the assessment roll
- ☐ Original ☐ Duplicate Copy

Notes:

7. MCL 211.10a Requirement – Pursuant to MCL 211.10a does the local unit provide customary business hours for inspection and copying of public records?

- ☐ Yes If Yes, please indicate designated days and times. (specify):
- ☐ No

Notes:

If the answer above is NO, has the local unit adopted a policy and/or procedure(s) to be utilized regarding the inspection and copying of public records?

- ☐ Yes If Yes, please attached a copy of policy/procedure.
☐ No

Notes:

8. Where are the real and personal property records, assessment roll(s) and support documents retained?

- ☐ a) Local unit public offices
☐ b) Office/home of township supervisor
☐ c) Office/home of assessing officer
☐ d) Other (specify):

Notes:

9. Assessment Roll Requirements – Please identify which of the following specific data or information is posted to the current assessment roll:

- ☐ a) Name & address of property owner
☐ b) Legal description or STC approved parcel code number
☐ c) School district code
☐ d) Property classification
☐ e) Assessed valuation
☐ f) Capped valuation
☐ g) Taxable valuation
☐ h) Board of Review valuation column
☐ i) MTT and/or STC valuation column
☐ j) Homestead or Qualified Agricultural Property Exemption & percentage
☐ k) Date of last transfer of ownership

Notes:

10. Does the true cash value on the appraisal record card agree with the true cash value indicated by the assessed value on the assessment roll?

- ☐ Yes ☐ No If No, date(s) last calculated.

Notes:

11. Do the appraisal record cards properly account for all physical items located on the description?

☐ 90% + Accurate

☐ 80% - 89% Accurate

☐ 79% or less Accurate

Notes:

12. MCL 211.27a (3) Requirement(s) – Pursuant to MCL 211.27a(3) is the local unit in substantial compliance with the uncapping of taxable valuations the year following a transfer of ownership?

☐ Yes ☐ No **If NO, documentation required.**

Notes:

13. Based on a sampling of properties involving new construction which occurred in the prior year, do the current year's assessments include new construction?

☐ Yes ☐ No **If NO, documentation required.**

Notes:

14. Based on a sampling of known "sale" properties, is the local unit in substantial compliance with STC Bulletin 19 of 1997?

☐ Yes ☐ No **If NO, documentation required.**

Notes:

14b. Calculated Co-efficient of Dispersion:

Calculated Price Related Differential:

Notes:

Additional Notes:

CERTIFICATION: I hereby declare that the foregoing information submitted is a complete and true statement.

Electronic Signature:

☐ By clicking the box, I agree the signature I have typed above will be the electronic representation of my signature for purpose when I use it on this document and is a legally-binding contract. I further understand that signing documents using this electronic signature will have the same legally-binding effect as signing my signature using pen and paper.

Date:

Title:

Summary of ARC Review

Local Unit Certification Statement

MICHIGAN STATE TAX COMMISSION ASSESSMENT AND CERTIFICATION DIVISION

Local Unit: _____

County: _____

1. Please identify the assessing officer who has signed the pre-Board of Review certification of the assessment roll.

Name of Township Supervisor/City Manager/Mayor: _____

Name of Assessing Officer: _____

SAB Certification No.: _____

SAB Certification Level: _____

Required Unit Level: _____

Comments:

2. MCL 211.10e Requirements - Pursuant to MCL 211.10e, please identify which of the following assessment records are used and maintained by the local assessing officer: Land value tables and land value maps. Land value maps generally consist of a map of the local unit, usually broken down by neighborhoods showing the land values used in those neighborhoods. If the land values are estimated or county equalization values are used, please indicate so in the notes area below. A listing of sales used to determine the land values, an analysis of the sales listing that arrives at the final land table, and a print out of the land table are required for an affirmative answer below.

☐ **Land value maps:** please note below any classifications not represented on a land value map. (An "X" in the box indicates a "yes" answer.)

☐ **Land value determination;** (grids or tables and analysis)

☐ Agricultural Classification

☐ Commercial Classification

☐ Industrial Classification

☐ Residential Classification

☐ Timber/Cutover Classification

☐ Developmental Classification

Notes:

3. **ECF determination** (grids or tables and analysis – there must be a sales listing and ECF calculations – a simple listing of an ECF table will not suffice) An “X” in the box indicates a “yes” answer. (Note; if the ECFs are estimated or county ECFs, please indicate in the notes area below)

- ☐ Agricultural Classification
☐ Commercial Classification
☐ Industrial Classification
☐ Residential Classification
☐ Timber/Cutover Classification
☐ Developmental Classification

Notes:

4. Does this unit have office hours for the inspection and copying assessment records?
a) If so, please circle days & list hours: Days: M Tu W Th F Hours:
Days: M Tu W Th F Hours:
b) If not, has the unit adopted a policy and/or procedure regarding the inspection and copying of public records?

- ☐ YES If YES, please attach a copy of policy/procedure.
☐ NO

Notes:

5. Please identify the portion of the parcels in each classification were field inspected in the prior year. STC guidelines indicate a 20% inspection rate of real parcels. Field inspection means an actual physical inspection of the parcel and measurement of at least several of the major structure dimensions. Digital aerial photos may be used in addition to field inspection if certain standards are met. (Parcel count, not SEV or percentage of parcels inspected)

- ☐ a) Total Agricultural real in classification _____; Number inspected _____
☐ b) Total Commercial real in classification _____; Number inspected _____
☐ c) Total Industrial real in classification _____; Number inspected _____
☐ d) Total Residential real in classification _____; Number inspected _____
☐ e) Total Timber cutover real in classification _____; Number inspected _____
☐ f) Total Developmental real in classification _____; Number inspected _____

Notes:

6. Based on a sampling of properties involving new construction that occurred in the prior year, do the current year's assessments include equalization new and capped value additions on the assessment roll? This is a check of permitted construction and non permitted construction. (Some units do not require building permits for agricultural and small buildings.)

☐ YES

☐ NO

Notes:

7. Does the true cash value on the appraisal record card agree with the true cash value indicated by the assessed value on the assessment roll? This is a check for overridden values on the appraisal record cards (ARC) and an excessive use of flat land values.

☐ YES

☐ NO

Notes:

I hereby certify the aforementioned statements are true and accurate:

Assessor; include Certification Number _____

Date: _____

Township Supervisor or City Manager or Mayor _____

Date: _____

Date: March 22, 2011

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: 2011-12 Healthcare & Wellness Program

SUMMARY OF REQUEST: It is time to renew the City's healthcare coverage for 2011-12. Renewal premiums for the City's current healthcare program have come in at \$887.88/employee/month, an 8.83% increase over the current rate (\$815.85). Last year we experienced a 9.45% increase. In comparative terms, the rate increase is fairly moderate. Many employers are experiencing double-digit increases partially attributable to coverage enhancements mandated by last year's federal healthcare legislation.

For 2011-12, the City will continue to pay HRA deductibles for employees who complete the four-step wellness initiative prior to April 30th; non-participants in the wellness program will pay the first \$500 (single)/ \$1,000 (family) of the deductible.

Staff is also focusing on increasing the premium co-pay in employee negotiations.

FINANCIAL IMPACT: Following is an estimate of proposed costs for the Priority Health HMO program compared with the current year:

	2010-11	2011-12
Annual Premium per Employee	\$9,790	\$10,655
Approx. Self-Insured HRA Costs per Employee	700	700
Typical Employee Premium Co-pay	(520)	(780)
Net City Cost	9,970	10,575
Approx. # of Covered Employees (Subject to Reduction)	231	231
Total Annual City Cost	\$2,303,070	\$2,442,825

BUDGET ACTION REQUIRED: Employee and retiree healthcare costs will be included in the forthcoming 2011-12 budget.

STAFF RECOMMENDATION: Authorize staff to execute documents with Priority Health to renew healthcare coverage.

COMMITTEE RECOMMENDATION: None.

PRIORITYHMOSM COPAY ALIGNMENT RATE EXHIBIT

Proposal for: City of Muskegon

Effective Date: June 1, 2011 – May 31, 2012

Rate Guarantee: For 12 months from the effective date of coverage, or to the renewal date of the traditional carrier, whichever is sooner.

Benefit Level: Basic agreement with: \$15 PCP Office Visit Copayment
\$30 Specialist Office Visit Copayment
100% Hospital Coverage

Deductible: \$1,000 Individual / \$2,000 Family Medical Deductible

Riders: \$10/\$40 Prescription Drug Copayment, Including Contraceptives
Mail Order: 90-Day Supply at Two Times the Rx Copayment
80% Durable Medical Equipment Coverage
80% Prosthetic & Orthotics Coverage
\$100 Advanced Imaging Copayment
\$100 Emergency Room Copayment
\$45 Urgent Care Copayment
\$50 Ambulance Copayment
Vision rider – High Plan

Monthly Rate:

Single	Double	Family
\$887.88	\$887.88	\$887.88

\$ 815.85 current
+8.83%

PRIORITY HEALTH
Paula Brawdy
Key Account Manager
March 3, 2011

- Rates are subject to approval by the Office of Financial and Insurance Regulation (OFIR).
- Groups that lose grandfathered status may be required to purchase additional riders under Health Care Reform.
- Priority Health reserves the right to withdraw this rate exhibit up to the effective date of coverage should the account fail to meet minimum underwriting standards.

A decision on the benefit level for renewal of Priority Health must be received by the 1st of the month prior to the renewal date. If no decision is received, the plan will automatically renew at the current benefit level and benefits cannot be changed mid plan year.

Commission Meeting Date: March 22, 2011

Date: March 15, 2011
To: Honorable Mayor and City Commission
From: Community and Neighborhood Services Department
RE: 2011 – 2012 CDBG/HOME Recommendations.

SUMMARY OF REQUEST: To accept the recommendations of the Administration and Citizen's District Council in regards to the 2011 – 2012 CDBG/HOME anticipated entitlement. The Commission is scheduled to make their preliminary decision regarding the 2011-2012 CDBG/HOME allocation entitlement during the City Commission meeting scheduled for March 22, 2011, with a public hearing of the same.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: To determine a budget for the CNS department and direct staff to publish the recommended budget for a 30 day comment period for the proposed July 1, 2011- June 30, 2012 program year.

STAFF RECOMMENDATION: To approve the acceptance of the recommendations of the Administration and Citizen's District Council and to make their preliminary recommendations for publication.

COMMITTEE RECOMMENDATION: The Citizen District Council has made their recommendations. (See attached spreadsheet and memo.)

Community Development Block Grant 2011 - 2012

Organization/Agency	Activity	Amount Requested	Admin Recommend	CDC Rec	City Commission Preliminary Rec.	City Comm Final Determination
COM - Affirmative Action	Affirmative Action	\$15,000	\$10,000	\$10,000		
COM - Affirmative Action	Summer Internships	\$10,000	\$10,000	\$10,000		
COM - CNS	CDBG Admin **	\$180,000	\$150,000	\$150,000	\$150,000	\$150,000
COM - CNS	Emergency Repair	\$250,000	\$225,000	\$225,000		
COM - CNS	Service Delivery	\$80,000	\$65,000	\$65,000	\$65,000	\$65,000
COM - CNS	Vinyl Siding	\$150,000	\$100,000	\$79,000		
COM - DPW	Senior Transit*	\$69,345	\$45,000	\$45,000		
COM - Engineering	Street Construction	\$250,000	\$130,543	\$130,543		
COM - Finance	Fire Station Bond Repayment	\$157,870	\$157,870	\$157,870	\$157,870	\$157,870
COM - Inspections	Dangerous Bldgs/Demolition & Board Ups	\$50,000	\$50,000	\$50,000		
COM - Leisure Services	Youth Recreation*	\$100,000	\$70,000	\$70,000		
COM - Planning	Code Enforcement	\$67,547	\$50,000	\$50,000		
COM - Planning Comm Economic Dev	Façade	\$25,000	\$15,000	\$15,000		
Love INC	Emergency Assistance/Handicap Ramps*	\$8,000	\$8,000	\$8,000		
American Red Cross	Senior Transportation*	\$0	\$0	\$3,500		
Community enCompass	Healthy Neighborhood Project*	\$0	\$0	\$3,500		
HealthCARE	Health Outreach*	\$0	\$0	\$3,500		
West Michigan Veterans	Food Bank*	\$0	\$0	\$3,500		
Legal Aid	Housing Related Legal Services*	\$0	\$0	\$3,500		
Muskegon Community Health Project	Uninsured Diabetes Outreach*	\$0	\$0	\$3,500		
		\$1,412,762	\$1,086,413	\$1,086,413	\$372,870	\$372,870
	Total CDBG Allocated	\$1,086,413	\$1,086,413	\$1,086,413	\$1,086,413	\$1,086,413
	Expected program income (Debt Recovery)	\$0	\$0	\$0	\$0	\$0
NOTE:	Total	\$1,086,413	\$1,086,413	\$1,086,413	\$1,086,413	\$1,086,413
* Public Service	Allocated/Request Difference	(\$326,349)	\$0	\$0	\$713,543	\$713,543
** City CDBG Administration						
	Total Amt of Public Service*	\$177,345	\$123,000	\$123,000	\$0	\$0
	Public Service mandated Amt <= to 15%	\$162,962	\$162,962	\$162,962	\$162,962	\$162,962
	Allocation Difference	(\$14,383)	\$39,962	\$39,962	\$162,962	\$162,962
	Total Amt of City Administration Request**	\$180,000	\$150,000	\$150,000	\$150,000	\$150,000
	Administrative Maximum Amt < 20%	\$217,283	\$217,283	\$217,283	\$217,283	\$217,283
	Difference	\$37,283	\$67,283	\$67,283	\$67,283	\$67,283

HOME Grant 2011 - 2012

Organization/Agency	Activity	Amount Requested	Admin Recommend	CDC Rec	City Commission Preliminary Rec.	City Comm Final Determination
Community enCompass	Housing Transition Asst****	\$70,000	\$50,000	\$70,000		
Muskegon County Habitat for Humanity	Infrastructure/construction (3 homes)****	\$53,000	\$53,000	\$53,000		
COM - CNS	HOME Administration***	\$32,071	\$32,071	\$32,071		
COM - CNS	HOME Infill/New Construction	\$150,000	\$150,000	\$100,639		
COM - CNS	HOME Rental Rehabilitation	\$65,000	\$35,639	\$65,000		
Total HOME Request		\$370,071	\$320,710	\$320,710	\$0	\$0
Total HOME Allocated		\$320,710	\$320,710	\$320,710	\$320,710	\$320,710
(+) Program Income		\$0	\$0	\$0	\$0	\$0
Total		\$320,710	\$320,710	\$320,710	\$320,710	\$320,710
Allocated/Request Difference		(\$49,361)	\$0	\$0	\$320,710	\$320,710
Total Amt of HOME Administration***		\$32,071	\$32,071	\$32,071	\$0	\$0
Total Amt Designated = 10%		\$32,071	\$32,071	\$32,071	\$32,071	\$32,071
		\$0	\$0	\$0	\$32,071	\$32,071
Total Amt of HOME CHDO ****		\$123,000	\$103,000	\$123,000	\$0	\$0
Total Amt mandated = 15%		\$48,107	\$48,107	\$48,107	\$48,107	\$48,107
Allocation Difference		(\$74,894)	(\$54,894)	(\$74,894)	\$48,107	\$48,107

NOTE:

*** Home Administration

**** CHDO Request

AGENDA ITEM NO. _____

CITY COMMISSION MEETING March 22, 2010

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: March 9, 2011

RE: Civil Service Budget Adjustment

SUMMARY OF REQUEST:

To authorize an increase in the Civil Service budget in the amount of \$10,000. This amount should carry the Civil Service operation into the middle of next month and provide the Civil Service Commission additional time to consider options for the future direction of the operation. This action is necessary due to the rate of spending in contrast to the original budgeted allocation.

FINANCIAL IMPACT:

\$10,000.

BUDGET ACTION REQUIRED:

Authorize the budget adjustment.

STAFF RECOMMENDATION:

To approve the proposed budget adjustment.

COMMITTEE RECOMMENDATION:

None.