

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**FEBRUARY 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. **Amendment to the Zoning Ordinance – Outdoor Lighting.** PLANNING & ECONOMIC DEVELOPMENT
  - C. **Rezoning Request for the Property Located at 1221 W. Laketon Avenue.** PLANNING & ECONOMIC DEVELOPMENT
  - D. **Easement from Brunswick to Construct Sidewalks along the North Side of Laketon Avenue on Parts of Blocks 438, 458 and 459.** ENGINEERING
- ❑ **PUBLIC HEARINGS:**
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**
  - A. **ChargePoint Station – Muskegon: Master Services Subscription Agreement.** PLANNING & ECONOMIC DEVELOPMENT
  - B. **Shoreline Spectacular Request – Labor Day Weekend 2011.** PLANNING & ECONOMIC DEVELOPMENT
  - C. **Breakwater Festival Request – Labor Day Weekend 2011.** PLANNING & ECONOMIC DEVELOPMENT

❑ **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: February 22, 2011  
To: Honorable Mayor and City Commissioners  
From: Ann Marie Becker, City Clerk  
RE: Approval of Minutes

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SUMMARY OF REQUEST: To approve minutes of the February 7<sup>th</sup> Commission Worksession Meeting and the February 8<sup>th</sup> City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon  
City Commission Worksession  
February 7, 2011  
City Commission Chambers  
5:30 PM

MINUTES

2011-07

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

Absent: Mayor Warmington (excused).

**City-GVSU Joint Permit-Offshore Buoy Project.**

Arn Boezaart, Director GVSU/MAREC, explained that in order to place a research buoy in Lake Michigan, GVSU/MAREC has requested that the City of Muskegon officially apply for a permit with the U.S. Army Corps of Engineers and the Michigan Department of Environmental Quality Water Programs. GVSU/MAREC is unable to apply directly since the applicant must be a riparian owner on the Lake Michigan waterfront. However, all application costs and staff time needed to submit the permit will be absorbed by GVSU/MAREC. Since the City of Muskegon and MAREC have formed a successful partnership, it is requested that this request be approved.

**Motion by Commissioner Shepherd, second by Commissioner Wierengo to accept the recommendation from staff to participate with GVSU/MAREC in submitting an application to the U.S. Army Corps of Engineers and the MDEQ Water Programs to allow for an offshore buoy to conduct wind assessment research on Lake Michigan.**

**ROLL VOTE: Ayes: Shepherd, Spataro, Wierengo, Wisneski, Carter, and Gawron  
Nays: None**

***MOTION PASSES***

**Discussion on Plowing of Alleys.**

There are 300 miles of streets in the City. We attempt to accommodate all of our citizen's. The alleys are plowed by request and those requests have increased. We do accommodate the property owners by allowing parking on the terrace during the winter snow months. It was asked if the 2-6 a.m. parking ban is necessary. In reply it was stated that it gives the plow trucks an advantage by having no cars on the street and also the cars will not have snow plowed around them and possible damage done to the vehicles.

**Adjournment**

**Motion by Commissioner Carter, seconded by Commissioner Shepherd to adjourn at 5:58 p.m.**

***MOTION PASSES***

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**Ann Marie Becker, MMC  
City Clerk**

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**FEBRUARY 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, MI at 5:30 p.m., Tuesday, February 8, 2011.

Vice Mayor Gawron opened the meeting with a prayer from Pastor Josh Dear from the Lakeside Baptist Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

#### **ROLL CALL FOR THE REGULAR COMMISSION MEETING:**

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

Absent: Mayor Stephen Warmington (excused)

#### **2011-08 CONSENT AGENDA:**

##### **A. Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Commission Goal Setting Session that was held on Friday, January 21, 2011, and the City Commission Meeting that was held on Tuesday, January 25, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

##### **B. Purchase of Police Patrol Bicycles.** PUBLIC SAFETY

SUMMARY OF REQUEST: The Director of Public Safety is requesting permission to purchase 12 new police patrol bicycles. These bicycles will replace 12 Trek Police Bicycles that are currently in use and were purchased in the late 90's. Bids were solicited from the following businesses:

- The Bicycle Rack – 1790 Roberts, Muskegon
- Breakaway Bicycle – 4741 Harvey, Muskegon
- Village Bike & Fitness – 450 Baldwin, Jenison

I am recommending the purchase of the Trek Police Bike from Breakaway Bicycle. Breakaway is the only business who submitted a bid for the Trek. While this is the most expensive model of those bid (\$1,000 per bicycle), this bicycle is built specifically for the rigors of police service. This is evidenced by the length of time that the current bicycles have been in service. This bicycle is complete and no “extras” need to be purchased.

FINANCIAL IMPACT: Total cost for this purchase will be approximately \$12,000. This purchase will be funded by the Criminal Forfeiture Account.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the request.

**C. Approval of the Fair Housing Resolution.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: The Community and Neighborhood Services Department is requesting that a resolution be adopted for the City of Muskegon for all MSHDA NSP1, CDBG, LEAD and HOME Investment Act Program activities.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: As an Equal Housing Opportunity participant jurisdiction, the City of Muskegon supports Fair Housing Law and Title VIII of the Civil Rights Act of 1968. We are requesting to approve the authorizing resolution and direct the Mayor and Clerk to sign the resolution.

**D. Approval of Sale of City-Owned Property at 1585 Hudson.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Ms. Suzanne Hershey for the vacant property at 1585 Hudson, which is part of the City’s Neighborhood Stabilization Program through the Michigan State Housing Development Authority Office of Community Development. This is a non-buildable lot. Ms. Hershey is the adjacent property owner to 1585 Hudson.

As a part of the City’s continuous neighborhood redevelopment efforts, 1585 Hudson was purchased and demolished with Neighborhood Stabilization Program funds as a blighted structure.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

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

**E. Control System Annual Software Update/Support.** WATER FILTRATION

SUMMARY OF REQUEST: Renewal of the annual customer support for plant

operating system with Wonderware North.

FINANCIAL IMPACT: One time cost of \$11,385 for 2011.

BUDGET ACTION REQUIRED: None, this item is budgeted.

STAFF RECOMMENDATION: Staff requests authorization to renew the annual customer support agreement at a budgeted cost of \$11,385.00 for 2011.

**F. Accept Resignation and Make Appointments to Various Boards and Committees.** CITY CLERK

SUMMARY OF REQUEST: To accept the resignation from Kristy Weberg from the Equal Opportunity Committee, appoint Carlos Flores to the Citizen's Police Review Board, and appoint Jonathan Rolewicz to the Housing Code Board of Appeals.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended approval at their February 7<sup>th</sup> meeting.

**Motion by Commissioner Carter, second by Commissioner Spataro to approve the Consent Agenda as read.**

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

**Nays: None**

***MOTION PASSES***

**2010-09 NEW BUSINESS:**

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

SUMMARY OF REQUEST: The Muskegon Catholic Education Foundation, Inc. has submitted an application for a Special License for Beer, Wine and Spirits for Consumption on the Premises for April 30, 2011. This license is for an auction and dinner to be held at Muskegon Catholic Central High School.

The Foundation 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: Approval of the request.

**Motion by Commissioner Spataro, second by Commissioner Wierengo to**

**approve the application for special license for the event at Muskegon Catholic Central High School.**

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

**Nays: None**

***MOTION PASSES***

**B. Consideration of Bids for Isabella Avenue, Peck to Terrace (S-654 and W-724). ENGINEERING**

SUMMARY OF REQUEST: Award the construction contract to replace water and sewer lines in Isabella Avenue from Peck Street to Terrace Street to McCormick Sand Inc., out of Twin Lake, MI. McCormick Sand is the lowest responsible bidder for this project with a total bid price of \$374,698.20.

While completing the Bid Tabulation for this project, it was discovered that McCormick transposed the bid price on two line items. Line items numbered four (4) and five (5) had their bid prices transposed thus making their Bid Tabulation appear higher than the amount bid. Staff and contractor discussed and corrected the miscalculation, and it was determined that McCormick remained the lowest responsible bidder.

FINANCIAL IMPACT: The construction cost of \$374,698.20 plus engineering cost which is estimated at an additional 15%.

BUDGET ACTION REQUIRED: None at this time as this project appears on the 2010 – 2011 budget.

STAFF RECOMMENDATION: Award the contract to McCormick Sand Inc.

**Motion by Commissioner Spataro, second by Commissioner Wierengo to approve the bid for Isabella Avenue from Peck to Terrace to McCormick Sand Inc.**

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

**Nays: None**

***MOTION PASSES***

**ADJOURNMENT:** The City Commission Meeting adjourned at 5:40 p.m.

Respectfully submitted,

Ann Marie Becker, MMC  
City Clerk



**Commission Meeting Date: February 22, 2011**

**Date: February 15, 2011**  
**To: Honorable Mayor and City Commissioners**  
**From: Planning & Economic Development CBC**  
**RE: Amendment to the Zoning Ordinance**

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**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 2/10 meeting.

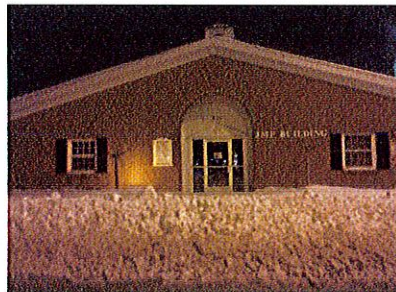
**Staff Report (EXCERPT)**  
**CITY OF MUSKEGON**  
**PLANNING COMMISSION**  
**REGULAR MEETING**

**BACKGROUND**

1. The outdoor lighting provisions in the zoning ordinance state that all lighting must be down-type, having 100% cutoff. Many businesses feel that this is too restrictive and that we can still maintain a dark sky initiative while allowing buildings to be illuminated properly.
2. Under the current provisions, you may not illuminate a building from the ground up, but you may illuminate a sign from the ground up. There are numerous businesses that legally illuminate their signage from the ground up, many of these signs are on the buildings themselves. These signs are properly lit and do not cause any glare or light spill off.
3. The City of Muskegon is not a member of the International Dark-Sky Association.



Conforming sign lighting



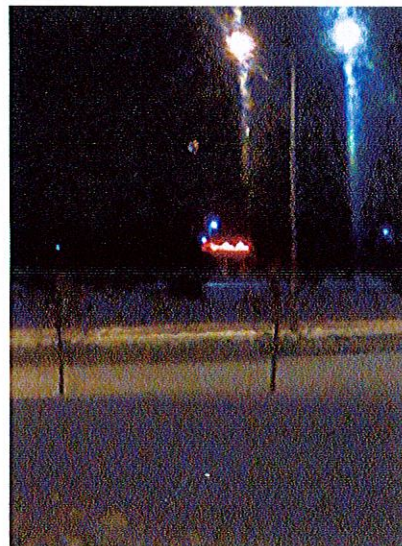
Non-conforming building lighting



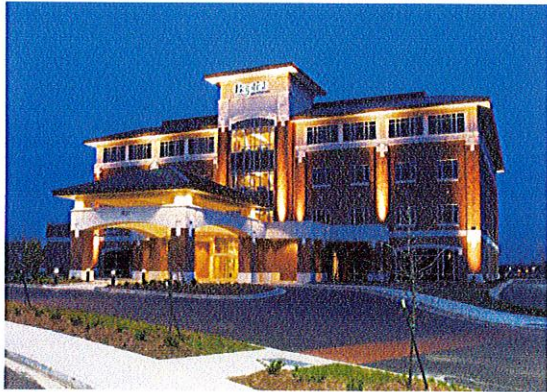
Conforming sign lighting



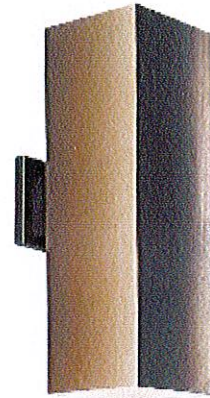
Shoreline Inn & Suites day and night



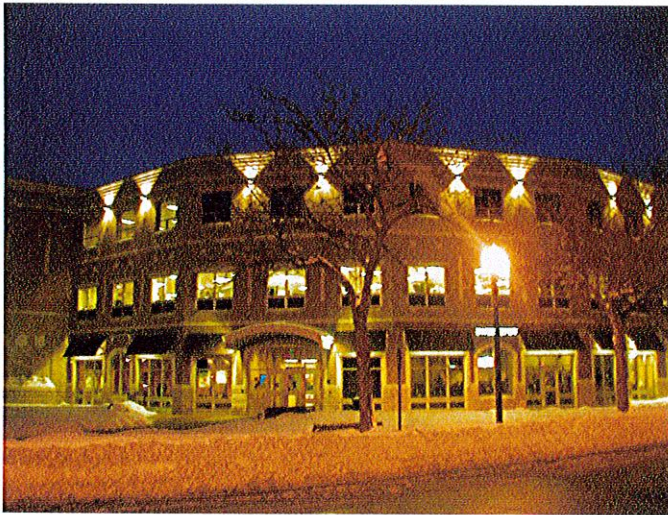




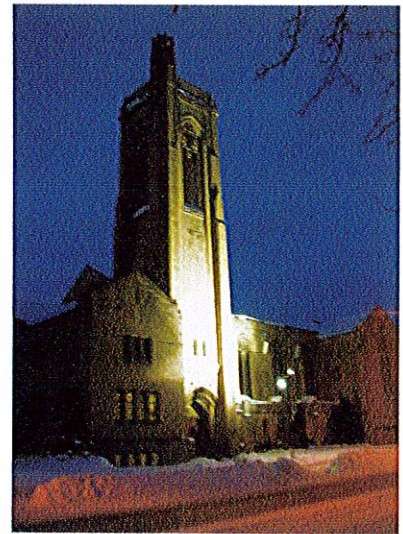
Building illuminated with no glare or light spill off



Fixture that shines upwards and downwards – currently not allowed



Baker Culinary Institute of Michigan (approved lighting, although is shouldn't have been under current zoning ordinance)



Grandfathered Lighting

*ordinance excerpt:*

14. Outdoor lighting in all districts: [amended 1/05] Outdoor lighting in newly developed commercial and industrial uses, subdivisions, condominium projects and planned unit developments, or replacement lighting for such developments and institutional uses, shall be designed and constructed in such a manner to insure that:
  - a. Direct or directly reflected light is confined to the development site.

- b. All light sources and light lenses are shielded.
- c. No light sources or light lenses are directly visible from beyond the boundary of the site.
- d. Lighting fixtures shall be a down-type having one hundred percent (100%) cut off. The light rays may not be emitted by the installed fixture at angles above the horizontal plane passing through the lowest point on the light fixture from which the light is emitted, as certified by the manufacturer's photometric test.
- e. Light sources shall be high-pressure sodium or halogen. Approved exceptions shall use warm white or natural lamp colors.
- f. Lighting shall be equipped with baffling or other devices to assure that the above requirements are achieved.
- g. The applicant shall submit the specifications for the lights, poles, fixtures and light sources to the City for approval prior to installation.
- h. The height of light poles shall not exceed twenty-five (25) feet as measured from average grade.

#### NEW LANGUAGE

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

Amendment to Section 2331 of Article XXIII:

14. Outdoor lighting in all districts: [amended 1/05] Outdoor lighting in newly developed commercial and industrial uses, subdivisions, condominium projects and planned unit developments, or replacement lighting for such developments and institutional uses, shall be designed and constructed in such a manner to insure that:
- a. Direct or directly reflected light is confined to the development site.
  - b. All light sources and light lenses are shielded.
  - c. No light sources or light lenses are directly visible from beyond the boundary of the site.
  - d. Lighting fixtures shall be a down-type having one hundred percent (100%) cut off. The light rays may not be emitted by the installed fixture at angles above the horizontal plane passing through the lowest point on the light fixture from which the light is emitted, as certified by the manufacturer's photometric test. **The following exceptions apply:**
    - 1. **Commercial and institutional uses may illuminate building facades without one hundred percent cut off provided the light lenses are shielded by a non-translucent fixture, only allowing the light to shine upwards or downwards. Light shining upwards must be contained to the building with no spillage to the night sky or adjacent properties. Lighting sources must be placed far enough from building edges or there must be an architectural element present to prevent the light from spilling off the building into the night sky or adjacent properties.**
    - 2. **Commercial and institutional buildings may illuminate building facades from the ground up as long as the light is contained directly on the building with no spillage to the night sky or adjacent properties. Light lenses must be shielded and not visible from adjacent properties.**
  - e. ~~Light sources shall be high-pressure sodium or halogen. Approved exceptions shall use warm white or natural lamp colors.~~ **All exterior lighting luminaries operating at greater than 100 watts shall contain lamps having a minimum efficacy of 60 lumen/watt.**

CITY OF MUSKEGON  
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

**An ordinance 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.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

**NEW LANGUAGE**

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

Amendment to Section 2331:

- d. Lighting fixtures shall be a down-type having one hundred percent (100%) cut off. The light rays may not be emitted by the installed fixture at angles above the horizontal plane passing through the lowest point on the light fixture from which the light is emitted, as certified by the manufacturer's photometric test. **The following exceptions apply:**
  - 1. **Commercial and institutional uses may illuminate building facades without one hundred percent cut off provided the light lenses are shielded by a non-translucent fixture, only allowing the light to shine upwards or downwards. Light shining upwards must be contained to the building with no spillage to the night sky or adjacent properties. Lighting sources must be placed far enough from building edges or there must be an architectural element present to prevent the light from spilling off the building into the night sky or adjacent properties.**
  - 2. **Commercial and institutional uses may illuminate building facades from the ground up as long as the light is contained directly on the building with no spillage to the night sky or adjacent properties. Light lenses must be shielded and not visible from adjacent properties.**
- e. ~~Light sources shall be high-pressure sodium or halogen. Approved exceptions shall use warm white or natural lamp colors.~~ **All exterior lighting luminaries operating at greater than 100 watts shall contain lamps having a minimum efficacy of 60 lumen/watt.**

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 February, 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 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: \_\_\_\_\_, 2011.

\_\_\_\_\_  
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 February 22, 2011, the City Commission of the City of Muskegon adopted an ordinance 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. 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

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

Account No. 101-80400-5354



## **Commission Meeting Date: February 22, 2011**

**Date:** February 15, 2011  
**To:** Honorable Mayor and City Commissioners  
**From:** Planning & Economic Development *CBC*  
**RE:** Rezoning request for the property located at 1221 W Laketon Ave.

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### **SUMMARY OF REQUEST:**

Staff initiated request to rezone the property at 1221 W Laketon Ave 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 2/10 meeting.

*Ordinance excerpt:*

Applicant: Planning Staff

Property Address/Location: 1221 W. Laketon Avenue

Request: Rezone from RM-2, Medium Density Multiple Family Residential District to R, One Family Residential District

Present Land Use: Women's Residential Shelter

Zoning: RM-2, Medium Density Multiple Family Residential

**BACKGROUND**

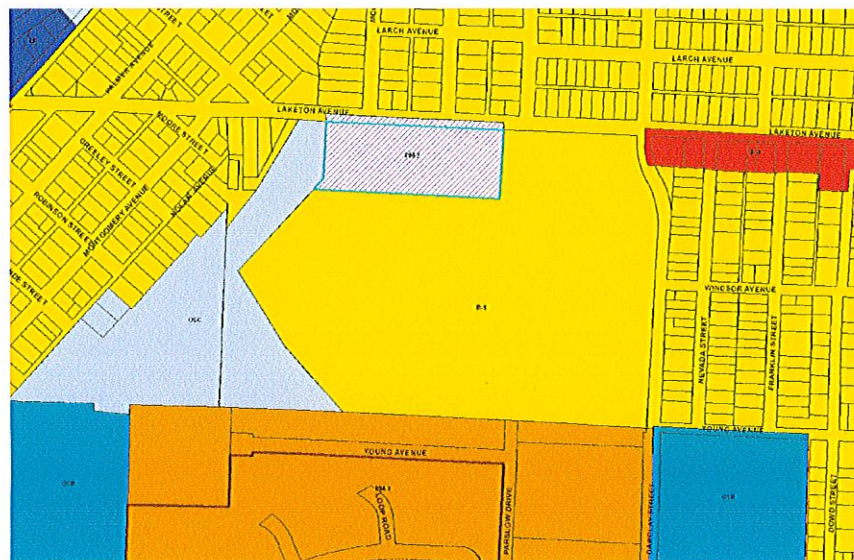
1. The property is a 5.63 acre parcel that presently contains a building owned and occupied by Every Woman's Place.
2. Every Woman's Place was approved for a rezoning from R-1, Single Family Residential District to RM-2, Medium Density Multiple Family Residential District for their property at 1221 W Laketon Ave. in September 2007.
3. City staff submitted a request in September 2008 to rezone the property back to R-1. The request was tabled until the May 2009 Planning Commission meeting. The request was finally denied on May 14, 2009 by Planning Commission and denied by City Commission on May 26, 2009.
4. Every Woman's Place was approved by Planning Commission in April 2009 for a 42,000 sqft addition to the existing 22,075 sqft. building. However, it appears that any expansion plans have stalled, and at the request of some City Commissioners, this rezoning request is now before you.
5. A definition for Transitional Living Centers was approved by Planning Commission and City Commission in October 2010. The zoning ordinance was amended to allow Transitional Living Centers only in B-5, Governmental Service Districts. This amendment made Every Woman's Place a legally non-conforming use.
6. Any addition to the current Transitional Living Center would need Planning Commission approval and may not exceed 25% of the current size of the facility. This would be required whether the property is rezoned or not.
7. Both Nims and Campbell residents have shared concerns over the current zoning of the property and the impact a large scale residential development, which would be allowed in RM-2 Districts, would have on the neighborhoods.



Every Woman's Place building



Vacant portion of property to the west.



Zoning Map

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

**An ordinance to amend the zoning map of the City to provide for a zone change for a property from RM-2, Medium Density Multi-Family District to R-1, Single Family Residential District.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for the following described property from RM-2, Medium Density Multi-Family District to R-1, Single Family Residential District.

CITY OF MUSKEGON SEC 36 T10N R17W COM AT THE N 1/4 COR OF SD SEC TH N 90D 00M 00S W ALG THE N LN OF SEC A DIST OF 97.68 FT TO POB TH CONT S 00D 20M 40S E A DIST OF 306.62 FT TH N 90D 00M 00S W PAR WITH THE N LN OF SEC A DIST OF 838.79 FT TH N 40D 22M 22S E A DIST OF 65.10 FT TH N 00D 07M 05S W A DIST OF 257.02 FT TH S 90D 00M 00S E ALG N LN OF SEC A DIST OF 795.31 FT TO POB CONTAINING 5.626 ACRES

This ordinance adopted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Adoption Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

CITY OF MUSKEGON

By: \_\_\_\_\_

Ann Marie Becker, MMC  
City Clerk

CERTIFICATE (Rezoning of 1221 W Laketon Ave from RM-2 to R-1)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 22nd day of February, 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 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: \_\_\_\_\_, 2011.

\_\_\_\_\_  
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 February 22, 2011, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for the property from to RM-2 "Medium Density Multi-Family Residential District" to R-1 "Single Family Residential District":

CITY OF MUSKEGON SEC 36 T10N R17W COM AT THE N 1/4 COR OF SD SEC TH N 90D 00M 00S W ALG THE N LN OF SEC A DIST OF 97.68 FT TO POB TH CONT S 00D 20M 40S E A DIST OF 306.62 FT TH N 90D 00M 00S W PAR WITH THE N LN OF SEC A DIST OF 838.79 FT TH N 40D 22M 22S E A DIST OF 65.10 FT TH N 00D 07M 05S W A DIST OF 257.02 FT TH S 90D 00M 00S E ALG N LN OF SEC A DIST OF 795.31 FT TO POB CONTAINING 5.626 ACRES

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

Date: February 22, 2011  
To: Honorable Mayor and City Commissioners  
From: Easement from Brunswick to construct Sidewalks along the north Side of Laketon Ave. on parts of Blocks 438, 458 & 459.

#### SUMMARY OF REQUEST:

Authorize staff to execute the attached agreement with Brunswick accepting easements to construct sidewalks as part of the upcoming reconstruction of Laketon Ave. between Biedler & Park. Furthermore, if approved, direct staff to record said easements.

#### FINANCIAL IMPACT:

One dollar

#### BUDGET ACTION REQUIRED:

None

#### STAFF RECOMMENDATION:

Authorize staff to execute agreement and record easements.

#### COMMITTEE RECOMMENDATION:

### SIDEWALK EASEMENT

THIS EASEMENT is granted this 10<sup>th</sup> day of February, 2011,  
by Brad C. Gandy, whose address is 525 West Laketon,  
hereinafter referred to as "Grantor," to the City of Muskegon, a Michigan municipal corporation,  
whose address is 933 Terrace Street, Muskegon, Michigan, 49443 hereinafter referred to as "City";

### WITNESSETH:

For a consideration of One and no/100 (\$1.00) Dollar paid to Grantor, the receipt of which is acknowledged, the Grantor grants to City, its successors and assigns, a non-exclusive, perpetual easement and right-of-way over, under, through and across a certain parcel of land situated in the City of Muskegon, County of Muskegon and State of Michigan, the parcel of land being owned by Grantor in fee simple as follows:

See attached **Exhibit A**.

The easement shall consist of a portion of the above-described parcel of property designated as:

See attached **Exhibit B**.

This Easement is exempt from transfer tax by reason of MCL 207.526, Section 6(a); and MCL 207.505, Section 5(a).

The easement and right-of-way granted to the City shall be for the purpose of the construction and installation of a sidewalk through and across the Easement.

**TERM:** The easement and right-of-way under, through and across the Easement for the use and benefit of City, its successors and assigns, shall be perpetual.

**AUTHORITY:** Grantor warrants that they have the right and authority to grant this easement as above described and own the lands covered by the Easement.

**INDEMNIFICATION:** City agrees to fully defend, indemnify, save and keep harmless the Grantor from any and all claims for damage to real and personal property and injuries or death suffered by persons in any manner caused by or growing out of or in any way connected with the construction, installation, repair, maintenance or presence of the sidewalk, over, under and across the parcel of land of Grantor.

The Grantor has caused this Easement to be signed the day and year first above written. This instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, representatives, successors and assigns.



By: GRANTOR(S)

By: Brad C. Gandy

Brad C. Gandy V.P. of Operations.  
(Printed Name and Title)

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF MUSKEGON )

Acknowledged before me in Muskegon County, Michigan, on \_\_\_\_\_,  
2008, by \_\_\_\_\_.

Sign here: \_\_\_\_\_  
Type here: \_\_\_\_\_

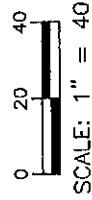
Notary Public  
\_\_\_\_\_, County, Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in Muskegon County, Michigan

Prepared by: Westshore Consulting  
Return to: City of Muskegon  
Engineering Department  
933 Terrace Street  
Muskegon, MI 49443



# EXHIBIT TO EASEMENT

RECEIVED  
CITY OF MUSKOGEE  
JAN 27 2011  
ENGINEERING DEPARTMENT



FOR: CITY OF MUSKOGEE

**EASEMENT DESCRIPTION:**

A PARCEL OF LAND IN PART OF BLOCK 458 OF THE 1903 REVISED PLAT OF THE CITY OF MUSKOGEE, AS RECORDED IN LIBER 3 OF PLATS, PAGE 71, MUSKOGEE COUNTY RECORDS, MUSKOGEE MICHIGAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 438 OF SAID 1903 REVISED PLAT OF THE CITY OF MUSKOGEE;

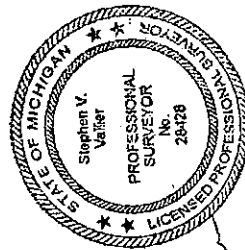
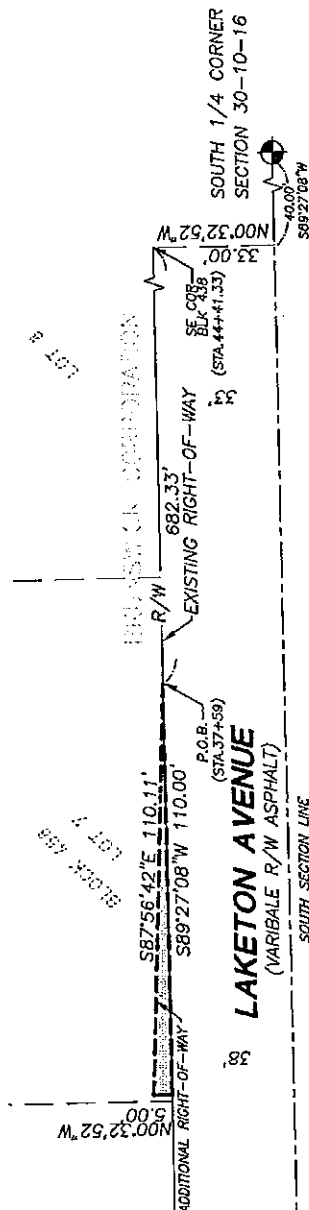
THENCE SOUTH 89 DEGREES 27 MINUTES 08 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF LAKETON AVENUE, A DISTANCE OF 682.33 FEET;

THENCE CONTINUE SOUTH 89 DEGREES 27 MINUTES 08 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF LAKETON AVENUE, A DISTANCE OF 110.00 FEET;

THENCE NORTH 00 DEGREES 32 MINUTES 52 SECONDS WEST, A DISTANCE OF 5.00 FEET;

THENCE SOUTH 87 DEGREES 56 MINUTES 42 SECONDS EAST, A DISTANCE OF 110.11 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF LAKETON AVENUE, BEING THE POINT OF BEGINNING.

PARCEL CONTAINS 0.01 ACRES MORE OR LESS.



*Signature*  
1/26/11

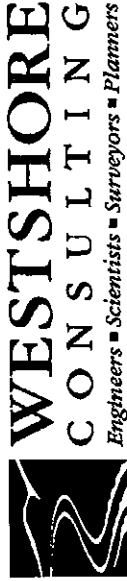
TEMPLE STREET  
(R/W ASPHALT)

FOUNDATION CORPORATION  
R/W

- LEGEND
- SECTION CORNER
- EASEMENT AREA

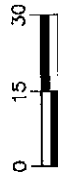
FILE NO: 10-0155  
SCALE: 1" = 40'  
SURVEYED BY: SW  
DRN BY: ELS

REVISED: 1/14/11  
DATE: 1/13/11  
SHEET 1 OF 1



# EXHIBIT TO EASEMENT

FOR: CITY OF MUSKEGON



SCALE: 1" = 30'

## EASEMENT DESCRIPTION

A PARCEL OF LAND IN PART OF BLOCK 438 & 459 OF THE 1903 REVISED PLAT OF THE CITY OF MUSKEGON, AS RECORDED IN LIBER 3 OF PLATS, PAGE 71, MUSKEGON COUNTY RECORDS, MUSKEGON, MICHIGAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 438 OF SAID 1903 REVISED PLAT OF THE CITY OF MUSKEGON;

THENCE CONTINUE NORTH 00 DEGREES 20 MINUTES 52 SECONDS WEST ALONG WESTERLY RIGHT-OF-WAY LINE OF PARK STREET, A DISTANCE OF 2.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 27 MINUTES 08 SECONDS WEST PARALLEL WITH THE NORTH RIGHT-OF-WAY OF LAKETON AVENUE, A DISTANCE OF 145.00 FEET;

THENCE SOUTH 85 DEGREES 59 MINUTES 05 SECONDS WEST TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF LAKETON AVENUE, A DISTANCE OF 33.07 FEET;

THENCE NORTH 00 DEGREES 20 MINUTES 52 SECONDS WEST PARALLEL WITH THE WEST RIGHT-OF-WAY LINE OF PARK STREET, A DISTANCE OF 4.50 FEET;

THENCE NORTH 88 DEGREES 27 MINUTES 08 SECONDS EAST PARALLEL WITH THE NORTH RIGHT-OF-WAY OF LAKETON AVENUE TO THE WESTERLY RIGHT-OF-WAY LINE OF PARK STREET, A DISTANCE OF 178.00 FEET;

THENCE SOUTH 00 DEGREES 20 MINUTES 52 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY OF PARK STREET, A DISTANCE OF 2.50 FEET TO THE POINT OF BEGINNING.

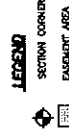
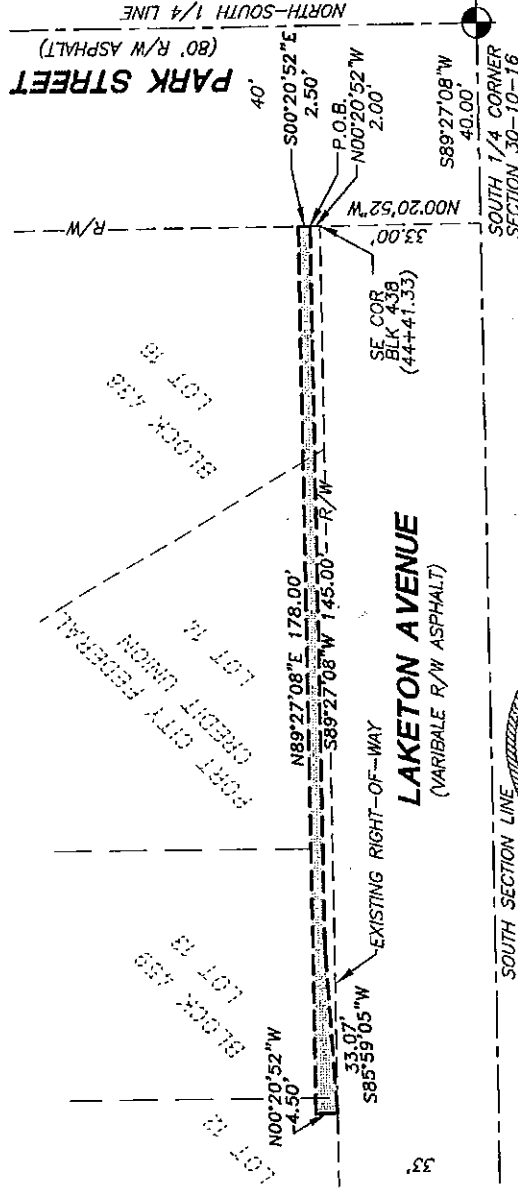
PARCEL CONTAINS 0.01 ACRES MORE OR LESS.

FILE NO: 10-0155

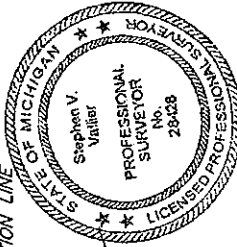
SCALE: 1" = 30'

SURVEYED BY: SV

DRN BY: ELS



DATE: 1/17/11  
DATE: 1/13/11  
SHEET 1 OF 1



© COPYRIGHT 2011

Commission Meeting Date: February 22, 2011

Date: February 14, 2011  
To: Honorable Mayor & City Commission  
From: Planning & Economic Development Department  
RE: ChargePoint Station- Muskegon: Master Services  
Subscription Agreement

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SUMMARY OF REQUEST: The Federal Government has contracted with ChargePoint (Coulomb Technologies, Inc) to install 297 electric vehicle charge stations in Michigan by October 1, 2011. Thus far, they have installed 70 stations. The West Michigan area will receive several stations, including over 20 in Muskegon County. Currently, there is a ChargePoint station at MAREC. Other municipalities are also having them installed (as well as institutions and businesses). The City has designated two parking spaces in the Western Avenue Parking Lot to be used for a station. We are in discussions with the Arena Management in this regard.

FINANCIAL IMPACT: The Federal Government will pay for the ChargePoint station equipment. The City will receive a grant in the amount of \$2,500 from the Lou Eklund Fund at the Community Foundation for Muskegon County for the station installation (estimated to be \$2,000; any funds remaining can be applied towards future maintenance fees). It is recommended to allow free access for the electrical charge for the first year. If it is determined that the station is being well used, the City can start charging for its use. If the City charges for the station use, there will also be a \$.50 per transaction fee and a 7.5% charge per total usage fee from ChargePoint for administration (they will not charge anything if the City does not charge anything-see attached e-mail from ChargePoint).

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the "ChargePoint Master Services Subscription Agreement" between the City of Muskegon and ChargePoint/Coulomb Technologies, Inc. and authorize the Mayor's signature.

**Potter, Linda**

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**From:** Brubaker-Clarke, Cathy  
**Sent:** Monday, February 14, 2011 11:53 AM  
**To:** Becker, Ann; Potter, Linda  
**Cc:** Mazade, Bryon; Schrier, John (attorney)  
**Subject:** FW: Revised Master Services Agreement

Ann and Linda, please include this e-mail to Commission with the ChargePoint agenda item. Thank you.  
 Cathy

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**From:** kim@shockingsolutions.com [mailto:kim@shockingsolutions.com]  
**Sent:** Monday, February 14, 2011 11:07 AM  
**To:** Brubaker-Clarke, Cathy  
**Cc:** John Auld; Fabio Zafferani  
**Subject:** RE: Revised Master Services Agreement

Hi Cathy,

You are correct in your understanding of the information included below. If you have any other questions that Len, Fabio or I can help you with, please do not hesitate to contact any of us.

Thank you and looking forward to hearing from you soon.

Regards,

Kim

----- Original Message -----

**Subject:** RE: Revised Master Services Agreement  
**From:** "Brubaker-Clarke, Cathy" <Cathy.Brubaker-Clarke@postman.org>;  
**Date:** Thu, February 10, 2011 4:25 pm  
**To:** [kim@shockingsolutions.com](mailto:kim@shockingsolutions.com)

Thank you, Kim. My understanding from my meeting with Len and Fabio, yesterday, is that ChargePoint will provide the equipment for the station and the City will pay for installation. Providing the City does not charge the customer for electricity, there will be no charge from ChargePoint, either (until January 2014). If we do charge a fee, there will also be a \$.50 per transaction fee, plus 7.5% session fee from ChargePoint. This charge will be administered by ChargePoint and the fee the City charges will be reimbursed through ChargePoint. In addition, there is a \$149/yr maintenance fee, but this fee will not go into effect until January 2014. In the meantime, ChargePoint will provide the maintenance for the station. In January 2014, there will also be a warranty fee, but this fee is not yet determined. If the City chose not to participate after 2013, we could refrain from making the payments to ChargePoint without additional consequences. Although I do not foresee this happening, as I believe the charge stations will become a success by that time, I need to make sure the City interests are attended to.

Providing the above statements are true, I plan to take the Agreement to our City Commission on Feb. 22.

Cathy

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**From:** [kim@shockingsolutions.com](mailto:kim@shockingsolutions.com) [mailto:kim@shockingsolutions.com]

2/15/2011

**Sent:** Wednesday, February 09, 2011 2:10 PM  
**To:** Brubaker-Clarke, Cathy  
**Subject:** Revised Master Services Agreement

Hi Cathy,

Here is the revised Master Services Agreement. Talk to you soon.

Kim

# CHARGEPOINT®

## MASTER SERVICES SUBSCRIPTION AGREEMENT

**IMPORTANT: PLEASE READ THIS MASTER SERVICES SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY.**

**THIS AGREEMENT GOVERNS REGISTRATION OF YOUR CHARGING STATION ON THE CHARGEPOINT NETWORK AND ACTIVATION OF CHARGEPOINT NETWORK SERVICES. SUBSCRIBING FOR A CHARGEPOINT NETWORK SERVICE CONSTITUTES ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IS BINDING ON YOU AND THE BUSINESS ENTITY YOU REPRESENT (COLLECTIVELY, “SUBSCRIBER” OR “YOU”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS; IF NOT, YOU MAY NOT ENTER INTO THIS AGREEMENT AND MAY NOT USE THE CHARGEPOINT SERVICES.**

**YOU MAY NOT ACCESS THE CHARGEPOINT SERVICES IF YOU ARE A DIRECT COMPETITOR OF CTI EXCEPT WITH CTI’S PRIOR WRITTEN CONSENT. IN ADDITION, YOU MAY NOT ACCESS THE CHARGEPOINT SERVICES FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSE.**

**1. DEFINITIONS.** The following terms shall have the definitions set forth below when used in this Agreement:

**1.1 “Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

**1.2 “ChargePass™ RFID Card”** means a CTI provisioned radio-frequency identification card issued to a ChargePass Account Holder which permits a User of such card access to the ChargePoint Network for the delivery of Subscriber-provided services and the ChargePass Account Holder to use the ChargePoint Network to manage their ChargePass Account.

**1.3 “ChargePass Account”** means an account registered with CTI that permits a User to prepay for access to Networked Charging Stations utilizing a ChargePass RFID Card.

**1.4 “ChargePass Account Holder”** means a User who has registered with the Network Operator and created a ChargePass Account.

**1.5 “ChargePoint Network”** means the Network Operator provisioned software, firmware, hardware (excluding Charging Stations owned and registered by Subscribers) and services for Subscribers and Users that, among other things, provision, manage, and allow access to Networked Charging Stations by ChargePass Account Holders via the RFID Card and by other Users via the utilization of contactless RFID embedded credit cards, or authorized credit or electronic debit card transactions and permit Subscribers to register, activate, monitor and operate Charging Stations.

**1.6 “ChargePoint Network Standard Service”** means the bundled group of ChargePoint Services that assist in the basic operation of the Networked Charging Stations. The ChargePoint Network Standard Service is required to be subscribed to by Subscriber in order to register and activate a Charging Station on the ChargePoint Network.

**1.7 “ChargePoint Services”** means the ChargePoint Network support services and ChargePoint software applications, as such may be introduced and made available to Subscribers by the

Network Operator from time to time, which provide network support and functionalities for Users and Subscribers and allow Subscribers, among other things, to monitor and control Networked Charging Stations. ChargePoint Services, including, but not limited to, the ChargePoint Network Standard Service, are made available for subscription by Subscribers pursuant to Purchase Orders entered into between Subscriber and CTI.

**1.8** ***“Charging Session”*** has the same definition as “Session” set forth below.

**1.9** ***“Charging Station”*** means the electric vehicle charging station(s) installed by Subscriber at the Subscriber Location(s), either manufactured by CTI or by another entity, which have embedded within them CTI proprietary hardware and firmware, enabling Subscriber to register and activate such charging stations on the ChargePoint Network. A charging station may be designated by a Subscriber as a Commercial Charging Station or a Free Charging Station, a Public Charging Station or a Private Charging Station and such designations may be changed at any time with respect to any Networked Charging Station(s) utilizing the ChargePoint Network Standard Service.

**1.10** ***“Commercial Charging Station”*** means a Charging Station that is designated by the Subscriber as one where Users must pay a Session Fee for access to the Charging Station.

**1.11** ***“CTI”*** means Coulomb Technologies, Inc., a Delaware corporation.

**1.12** ***“CTI Marks”*** means the various trademarks, service marks, names and designations used in connection with the CTI manufactured Charging Stations and/or the ChargePoint Network, including, without limitation, ChargePoint and ChargePass.

**1.13** ***“CTI Intellectual Property”*** means all intellectual property of CTI relating to the CTI Marks, the ChargePoint Network, the ChargePoint Services, ChargePass, ChargePass RFID Cards, ChargePass Accounts and all other Intellectual Property Rights of CTI.

**1.14** ***“Documentation”*** means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or the ChargePoint Network and made available by the Network Operator to Subscribers and/or Users in any manner (including on-line).

**1.15** ***“Free Charging Station”*** means a Charging Station that is designated by the Subscriber as one where Users do not pay a Session Fee for access to the Charging Station.

**1.16** ***“Intellectual Property Rights”*** means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

**1.17** ***“Malicious Code”*** means viruses, worms, time bombs, Trojan horses and other malicious code, malware, spyware, files, scripts, agents or programs.

**1.18** ***“Net Session Fees”*** means all Session Fees actually collected on behalf of the Subscriber from Users by Network Operator for use of Networked Charging Stations less Session Authorization Fees and Session Processing Fees, as well as any Taxes and Regulatory Charges, if any, required by law to be collected by CTI from Users in connection with the use of Networked Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes and Regulatory Charges incurred in connection with the Networked Charging Stations.



**1.19 “Networked Charging Station”** means a Charging Station for which a Subscriber has subscribed for the ChargePoint Network Standard Service and registered and activated such Charging Station on the ChargePoint Network.

**1.20 “Network Operator”** means the entity responsible for provisioning, managing and maintaining the ChargePoint Network and offering ChargePoint Services. CTI is the Network Operator in North America but is permitted at any time to assign its rights and obligations as Network Operator under this Agreement to another entity.

**1.21 “Network Web Portal”** means any of the secure Internet web portals established and maintained by the Network Operator which will allow (i) Subscriber through its Subscriber Accounts to access ChargePoint Services for the management and control of Subscriber’s Networked Charging Stations and (ii) ChargePass Account Holders through their respective ChargePass Accounts to track their use of Networked Charging Stations, replenish ChargePass RFID Cards and otherwise manage their ChargePass Account.

**1.22 “Party”** means the Network Operator and Subscriber.

**1.23 “Private Charging Station”** means a Charging Station for which access by the general public is restricted (e.g., a Charging Station located in a private parking facility or restricted corporate campus).

**1.24 “Public Charging Station”** means a Charging Station that is accessible by any User subject only to stated hours of operation.

**1.25 “Purchase Order”** means the purchase order(s) or other documentation entered into between Subscriber and the Network Operator, its distributors or other authorized representatives for the subscription of ChargePoint Services the terms of which are incorporated herein by reference.

**1.26 “Purchased ChargePoint Services”** means those ChargePoint Services made available by the Network Operator and for which a Subscription has been purchased by Subscriber with respect to any of Subscriber’s Networked Charging Stations or for which the Subscription Term has automatically been renewed pursuant to Section 8.3 (Automatic Renewal of Subscriptions).

**1.27 “Regulatory Charges”** is defined in Section 4.6 (Taxes and Regulatory Charges).

**1.28 “Session” or “Charging Session”** means a continuous period of time measuring not less than five (5) minutes commencing when a User has accessed a Networked Charging Station and the delivery of Subscriber provided services has been initiated and terminating upon the cessation by such User of the Subscriber provided services.

**1.29 “Session Authorization Fees”** means the fees payable by the Subscriber to the Network Operator to pre-authorize a Charging Session at a Commercial Networked Charging Station.

**1.30 “Session Fees”** means the fees set by the Subscriber for a Charging Session, including any applicable Taxes and/or Regulatory Charges.

**1.31 “Session Processing Fees”** means the fees charged by the Network Operator for the management, collection and processing of Session Fees on behalf of Subscriber and the remittance of Net Session Fees to Subscribers.

**1.32 “Session Transaction Fees”** means the complete set of fees, session authorization fees and session processing fees, charged by the Network Operator to the Subscriber for collection of User Session Fees on behalf of the Subscriber, as well as any applicable Taxes and Regulatory Charges.

**1.33** ***“Software Application”*** means computer programs, including firmware, as provided or otherwise made available to Subscriber by the Network Operator, or its distributors or other authorized representatives, as embedded in or downloaded by Subscriber to the Subscriber’s Charging Stations, related products and any Upgrades.

**1.34** ***“Subscriber”*** is an owner of one or more Charging Stations for which Subscriber has purchased Subscriptions for ChargePoint Services and registered with and activated on the ChargePoint Network.

**1.35** ***“Subscriber Account”*** means an account established by a Subscriber.

**1.36** ***“Subscriber Location(s)”*** means the physical locations where Subscriber has installed Networked Charging Stations registered with the ChargePoint Network.

**1.37** ***“Subscription”*** means a subscription for ChargePoint Services purchased by a Subscriber.

**1.38** ***“Subscription Fees”*** means the fees payable by Subscriber to the Network Operator for subscribing to any of the ChargePoint Services.

**1.39** ***“Subscription Term”*** means the Term for which Subscriber has purchased a Subscription for Purchased ChargePoint Services for a Networked Charging Station.

**1.40** ***“Taxes”*** is defined in Section 4.6 (Taxes and Regulatory Charges).

**1.41** ***“Upgrades”*** means any authorized upgrades, updates, bug fixes or modified versions of Software Applications furnished by the Network Operator.

**1.42** ***“Users”*** means any person using Networked Charging Stations including, without limitation, ChargePass Account Holders.

**1.43** ***“You”*** or ***“Your”*** means the company or other legal entity for which you are accepting this Agreement and the Affiliates of that company or entity.

## **2. CTI’S RESPONSIBILITIES AND AGREEMENTS.**

**2.1 NETWORK OPERATION.** The Network Operator shall be solely responsible for: (i) ***Provisioning and Operating the ChargePoint Network*** – provisioning and operating, maintaining, administration and support of the ChargePoint Network infrastructure (but excluding Subscribers’ Charging Stations and infrastructure for transmitting data from Networked Charging Stations to any ChargePoint Network operations center); (ii) ***Provisioning and Operating Network Web Portals*** – provisioning and operating, maintaining, administration and support of the Network Web Portals; (iii) ***User Acquisition, Administration and Support*** -- acquisition and registration of new ChargePass Account Holders, administration and support of ChargePass Accounts and provisioning the support services for Users embodied in the ChargePoint Services, and (iv) ***Data Protection*** – using commercially reasonable efforts to comply with all applicable laws and regulations of the United States of America and all other governmental entities governing, restricting or otherwise pertaining to the use, distribution, export or import of data, products, services and/or technical data whether such information or data relates to either the Subscriber or Users in connection with the ChargePoint Network.

**2.2 PURCHASED CHARGEPOINT SERVICES.** The Network Operator shall make the Purchased ChargePoint Services available to Subscriber pursuant to this Agreement and the applicable Purchase Orders for each Networked Charging Station during the Subscription Term. The Network Operator represents and warrants that: (i) ***Authority*** -- it has the power and authority to enter into and be bound by this Agreement, (ii) ***Performance of ChargePoint Services*** -- the ChargePoint Services shall

perform materially in accordance with the Documentation, (iii) **Support for Purchased ChargePoint Services** – it will provide all support for Purchased ChargePoint Services and technical support and maintenance for all Software Applications as set forth in the Documentation, including, without limitation, Upgrades, (iv) **Continuity of Purchased ChargePoint Services** – It will use commercially reasonable efforts to make the Purchased ChargePoint Services available 24 hours a day, 7 days a week, 365 days per year, except for planned downtime (of which Subscriber shall be given not less than eight (8) hours prior notice via electronic messaging to the email address for notices specified in each Subscriber Account), (v) **No Decrease in Functionality of ChargePoint Services** -- subject to Section 2.3(vi), the functionality of the ChargePoint Services shall not materially decrease during the Subscription Term, and (vi) **Malicious Code** – it will use commercially reasonable efforts to ensure that it does not transmit to Subscriber any Malicious Code (excepting Malicious Code transmitted to CTI or the Network Operator by Subscriber or its Affiliates). Subscriber's exclusive remedy for a breach of any of the foregoing shall be as provided in Section 8.4 (Termination) and Section 8.5 (Refund or Payment Upon Termination) as set forth below.

**2.3 LIMITATIONS ON RESPONSIBILITY.** Neither CTI, its distributors nor its other authorized representatives nor the Network Operator shall be responsible for, or makes any representation or warranty to Subscriber with respect to the following: (i) **Competing Subscriber Locations** -- specific location(s) or number of Networked Charging Stations now, or in the future, owned, operated and/or installed by Subscribers other than Subscriber, or the total number of Networked Charging Stations that comprise the ChargePoint Network; (ii) **Electrical Service Interruptions** – continuous availability of electrical service to any Networked Charging Stations; (iii) **Cellular and Internet Service Interruptions** – continuous availability of any wireless or cellular communications network or Internet service provider network not operated by CTI or the Network Operator; (iv) **Network Intrusions** – availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; (v) **Unregistered Charging Stations** -- Charging Stations that are not registered and activated with the ChargePoint Network, and (vi) **Google™ Services** – the continued availability of any Google services incorporated for use with the ChargePoint Services; provided that, if Google ceases to make the Google Application Programming Interface (“API”) or any similar program available on reasonable terms for the ChargePoint Services, the Network Operator shall make commercially reasonable efforts to replace the Google API or such similar program with products providing similar functionalities if such products are available upon terms which the Network Operator, in its reasonable discretion, believes are commercially reasonable; and provided further that, if Google ceases to make the Google API or similar program available, or available on reasonable terms for the ChargePoint Services, the Network Operator may cease providing such features without entitling Subscriber to any refund, credit or other compensation.

**2.4 DISCLAIMER OF WARRANTY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 2, NEITHER CTI, THE NETWORK OPERATOR NOR ANY OF THEIR RESPECTIVE DISTRIBUTORS OR OTHER AUTHORIZED REPRESENTATIVES AS APPLICABLE, MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY FOR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### **3. SUBSCRIBER RESPONSIBILITIES AND AGREEMENTS**

**3.1 GENERAL.** Subscriber shall be solely responsible for: (i) **Installation of Charging Stations and/or Related Electrical Vehicle Charging Products** – the purchase and installation of Subscriber's Charging Stations and other electrical vehicle charging products shall be at Subscriber's sole cost and expense; (ii) **Registration and Activation of Charging Stations with the ChargePoint Network** – registration with and activation of Subscriber's Charging Stations on the ChargePoint Network through a

Network Web Portal, including, without limitation, keeping current Subscriber's contact information, email address for the receipt of notices hereunder, billing address for invoices and payment of Subscriber's Net Session Fees due under this Agreement; (iii) **Pricing and Access** -- setting the pricing (including all applicable Taxes and Regulatory Charges) for any Subscriber provided services accessed by Users through Networked Charging Stations that are designated Commercial Charging Stations and any conditions limiting access thereof, (iv) **Update of Registration of Charging Stations** -- if a Networked Charging Station is moved from its registered location Subscriber shall update the registration location of the Networked Charging Station on the appropriate Network Web Portal within five (5) business days of making any change in the Subscriber Location(s); (v) **Identification of Charging Stations and Subscriber Locations** -- provisioning and installation of appropriate signage that clearly and prominently identifies and, where appropriate, provides directions to the Subscriber Locations so that they may be easily located by Users; (vi) **Public Access Level** -- designation of each Networked Charging Station as either a Public Charging Station or a Private Charging Station; (vii) **Commercialization** -- designation of each Networked Charging Station as either a Commercial Charging Station or a Free Charging Station; (viii) **Appearance and Cleanliness** -- keeping Networked Charging Stations and Subscriber Locations(s) clean and free of graffiti, unauthorized advertising, debris and other materials that would obscure, block access or otherwise detract from or cast a negative light on the reputation of the ChargePoint Network; (ix) **Maintenance, Service and Repair of Networked Charging Stations** -- the maintenance, service, repair and/or replacement of Subscriber's Networked Charging Stations as needed, including deactivation of Networked Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber within ten (10) business days from the ChargePoint Network; (x) **Location of Charging Stations** -- assuring the accessibility, lighting and other factors pertaining to the safety of Users while utilizing the Charging Stations not directly related to the design or manufacture of the Charging Stations themselves; and (xi) **Compliance with Laws** -- operating and maintaining the Subscriber's Networked Charging Stations in a manner that complies with all applicable laws.

**3.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER.** Subscriber represents and warrants to CTI, the Network Operator, their respective its distributors and other authorized representatives that: (i) **Authority** -- Subscriber has the power and authority to enter into and be bound by this Agreement and to install the Charging Stations and any other electrical vehicle charging products to be registered and activated on the ChargePoint Network at the Subscriber Location(s); (ii) **No Violation With Subscriber's Electrical Supply or Other Agreements** -- Subscriber assumes all responsibility that the electrical usage consumed by any of Subscriber's Networked Charging Station does not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; (iii) **Installation of Charging Stations Will Not Violate Any Other Agreements or Laws** -- Subscriber will not install or attach Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way. Subscriber will observe all legal requirements with respect to vehicle clearances from intersections, points of ingress or egress and public infrastructure such as fire hydrants, lampposts, parking meters, and will otherwise observe all applicable governmental restrictions or restrictions applicable to the Subscriber Locations under any other agreements to which Subscriber is subject; and (iv) **Compliance Laws** -- Subscriber will comply with all applicable laws.

**3.3 FURTHER AGREEMENTS OF SUBSCRIBER MADE IN CONNECTION WITH REGISTRATION OF CHARGING STATIONS ON THE CHARGEPOINT NETWORK AND USE OF CHARGEPOINT SERVICES.** Subscriber further acknowledges and agrees with the Network Operator, CTI, and their respective distributors and authorized representatives, as applicable, as follows: (i) **Display of CTI Marks** -- Subscriber will not remove, conceal or cover the CTI Marks or any other markings, labels, legends,

trademarks, or trade names installed or placed on the Networked Charging Stations or any peripheral equipment for use in connection with the Networked Charging Stations for so long as such Charging Stations are Networked Charging Stations; (ii) **Use of Network Web Portals** -- Subscriber shall comply with, and shall have responsibility for and cause all other persons accessing or using Network Web Portals to comply with, all of the rules, regulations and policies of the Network Operator, as well as other networks and computer systems used to access Network Web Portals, whether operated by Subscriber, its suppliers or others and Subscriber agrees to indemnify and hold the Network Operator, CTI, and their respective distributors and authorized representatives, directors, shareholders, officers, agents, employees, permitted successors and assigns harmless from any third party notices, allegations, claims, suits or proceedings (each, a "Claim") resulting from Subscriber's use of Network Web Portals and the ChargePoint Services in violation of the terms of this Section 3.3(ii) or of Section 3.3(iii); (iii) **Use of the ChargePoint Network and ChargePoint Services** -- Subscriber shall be responsible for use of the ChargePoint Services in compliance with this Agreement, and in particular, shall: (A) use its commercially reasonable efforts to prevent unauthorized access to Purchased ChargePoint Services, (B) use the Purchased ChargePoint Services only in accordance with the Documentation and applicable laws and government regulation, (C) shall not sell, resell, rent or lease the Purchased ChargePoint Services, (D) shall not interfere with or disrupt the integrity of the ChargePoint Network, the ChargePoint Services or any third party data contained therein, and (E) shall not attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or their related systems or networks; (iv) **Future ChargePoint Services** -- Purchase Orders are not contingent on the delivery of any future functionality or features, nor dependent on any oral or written comments anticipating future functionality or features; (iv) **Ownership of Data** -- All data collected by the Network Operator in connection with the operation of the ChargePoint Network shall be owned by CTI and the Network Operator and Subscriber acknowledges and agrees that Subscriber shall have no right of access or the use of such data for any purpose other than the management of Subscriber's Networked Charging Stations while registered with the ChargePoint Network.

#### **4. FEES AND PAYMENT FOR PURCHASED CHARGEPOINT SERVICES.**

**4.1 SUBSCRIPTION FEES.** Subscriber shall pay the Subscription Fees set forth on any Purchase Order for Purchased ChargePoint Services. Except as otherwise specified herein or in any Purchase Order, (i) Subscription Fees are quoted in and payable in U.S. Dollars, (ii) Subscription Fees are based on ChargePoint Services purchased and not on actual usage, (iii) payment obligations are non-cancelable and are non-refundable, and (iv) Subscriptions are non-transferable (provided, that any Subscription may be transferred to a Charging Station that is purchased by Subscriber to replace a previously Networked Charging Station). Subscription Fees are based on annual periods that begin on the date of the Subscription start date and end each annual anniversary thereafter.

**4.2 INVOICING AND PAYMENT.** Subscriber shall provide the Network Operator with valid and up to date credit card information if Subscriber is subscribing for ChargePoint Services online through the applicable Network Web Portal. In all other cases, payment of Subscription Fees shall be made under the terms of any accepted Purchase Order pursuant to a method of payment reasonably acceptable to the Network Operator. Where Subscriber provides credit card information to the Network Operator through such Network Web Portal for the payment of Subscription Fees, Subscriber hereby authorizes the Network Operator to charge such credit card for all Purchased ChargePoint Services for the initial Subscription Term and the automatic renewal of Subscription Term(s) as set forth in Section 8.3 (Automatic Renewal of Subscriptions). All credit card charges shall be made in advance, either annually or in accordance with the terms of the accepted Purchase Order. If the Purchase Order specifies that payment shall be made by a method other than credit card, the Network Operator, its

distributors or authorized representatives, as applicable, shall invoice Subscriber in advance in accordance with the accepted Purchase Order (including the automatic renewal of Subscription Term(s)) and invoiced charges shall be due within thirty (30) days of the invoice date.

**4.3 OVERDUE SUBSCRIPTION FEES.** If any invoiced Subscription Fees are not received by the Network Operator by the due date, then such charges: (i) may accrue late interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until paid, and (ii) the Network Operator may condition future Subscription renewals and acceptance of Purchase Orders on payment terms other than those set forth herein.

**4.4 ACCELERATION AND SUSPENSION OF CHARGEPOINT SERVICES.** If any amount owing by Subscriber under this Agreement for Subscription Fees for Purchased ChargePoint Services or under any other agreement between the Network Operator and Subscriber is more than thirty (30) days overdue (or, in the event that Subscriber has authorized the Network Operator to charge the amount owing to Subscriber's credit card and payment under such credit card has been declined, more than 5 days has passed since Subscriber has received notice from the Network Operator of such event), the Network Operator may, without otherwise limiting the Network Operator's rights or remedies, accelerate Subscriber's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the use by Subscriber of the Purchased ChargePoint Services until such amounts are paid in full.

**4.5 PAYMENT DISPUTES.** The Network Operator shall not exercise its rights under Section 4.3 (Overdue Subscription Fees) or Section 4.4 (Acceleration and Suspension of ChargePoint Services) if the applicable charges are under reasonable and good faith dispute and Subscriber is cooperating diligently to resolve the dispute.

**4.6 TAXES AND REGULATORY CHARGES.** Unless required by law or otherwise stated herein, Session Authorization Fees and Session Processing Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value added, sales, local, city, state or federal taxes ("**Taxes**") or any fees or other assessments levied or imposed by any governmental regulatory agency ("**Regulatory Charges**"). Subscriber is responsible for the payment of all Taxes and Regulatory Charges hereunder in connection with Purchased ChargePoint Services, Session Fees, Session Authorization Fees and Session Processing Fees; provided that the Network Operator is solely responsible for all Taxes and Regulatory Charges assessable based on the Network Operator's income, property and employees. Where the Network Operator is required by law to collect and/or remit the Taxes or Regulatory Charges for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber in accordance with this Section 4 and deducted by the Network Operator from Session Fees, unless Subscriber has otherwise provided the Network Operator with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

## **5. FLEX-BILLING SERVICE FOR NETWORKED CHARGING STATIONS.**

**5.1. SESSION FEES.** Subscriber shall have sole authority to determine and set in real-time a User's Session Fees (which shall include all applicable Taxes and Regulatory Charges) applicable to Subscriber's Networked Charging Stations that are designated as Commercial Charging Stations.

**5.2 SESSION TRANSACTION FEES.** In exchange for the Network Operator collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes the Network Operator to deduct from all Session Fees collected: (i) a Session Authorization Fee, and (ii) a Session Processing Fee, each in the amount and subject to the terms and conditions as set forth in **Schedule 1**.

**5.3 PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** The Network Operator shall remit to Subscriber not more than thirty (30) days after the end of each calendar month to the address set forth in Subscriber's Account information registered on the applicable Network Web Portal all Net Session Fees.

**6. PROPRIETARY RIGHTS.**

**6.1 RESERVATION OF RIGHTS.** Subject to the limited rights granted expressly hereunder, CTI reserves all right, title and interest in and to the ChargePoint Services, including all related Intellectual Property Rights. No rights are granted to Subscriber hereunder except as expressly set forth herein. CTI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscribers or Users relating to the ChargePoint Services.

**6.2 RESTRICTIONS ON USE.** Neither Subscriber nor any of its Affiliates shall: (i) permit any third party to access the ChargePoint Services except as otherwise expressly provided herein or in any Purchase Order, (ii) create derivative works based on the ChargePoint Services, (iii) copy, frame or mirror any part or content of the ChargePoint Services, other than copying or framing on Subscribers own intranets or otherwise for Subscriber's own internal business purposes, (iv) reverse engineer any Charging Station or Software Application, or (v) access the ChargePoint Network, any Network Web Portal or the ChargePoint Services in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or "look and feel" of any Network Web Portal or the ChargePoint Services.

**6.3 GRANT OF LIMITED LICENSE FOR CTI MARKS.**

**(a) LICENSE GRANT.** Subscriber is granted under this Agreement the nonexclusive privilege of displaying the CTI Marks during the Term of this Agreement in connection with the Networked Charging Stations installed by Subscriber. Subscriber warrants that it shall not use any of the CTI Marks for any products other than the Networked Charging Stations at the Subscriber Locations(s). CTI may provide trademark usage guidelines with respect to Subscriber's use of the CTI Marks which will be made available on a Network Web Portal, in which case Subscriber thereafter must comply with such guidelines. If no such guidelines are provided, then for each initial use of the CTI Mark, Subscriber must obtain CTI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CTI Mark in the approved manner. The CTI Marks may not be used under this Agreement as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates.

**(b) NO REGISTRATION OF CTI MARKS BY SUBSCRIBER.** Neither Subscriber nor any of its Affiliates will take any action, directly or indirectly, to register or apply for or cause to be registered or applied in Subscriber's favor or in the favor of any third party any CTI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially similar to a patent, trademark, service mark, copyright, trade name or registered design of CTI or the Network Operator, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CTI or the Network Operator.

**(c) USE OF CTI MARKS BY SUBSCRIBER ON INTERNET.** Subscriber shall be entitled to use the CTI Marks to promote the ChargePoint Network on Subscriber-owned websites and through the Internet advertising of Subscriber and its Affiliates, provided, that Subscriber is limited to using the CTI Marks in connection with the Internet as follows: (i) **Compliance with Law** -- the use must be in

compliance with local rules regarding advertising of the Networked Charging Stations and the ChargePoint Network on the Internet; (ii) **No Domain Name** -- no license is granted to use or register any domain name containing "CTI", the name of the Network Operator or the CTI Marks; and (iii) **Notice of License** – Subscriber and its Affiliates, as applicable, will at all times indicate that each of the CTI Marks is a mark of CTI and used under license, as appropriate.

(d) **TERMINATION AND CESSATION OF USE OF CTI MARKS.** Upon termination of this Agreement Subscriber and its Affiliates will immediately discontinue all use and display of the name "CTI", the name of the Network Operator and the CTI Marks.

**6.4 FEDERAL GOVERNMENT END USER PROVISIONS.** CTI provides the ChargePoint Services, including Software Applications and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the ChargePoint Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 11.211 (Technical Data) and FAR 11.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial items) and DFAR 226.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with CTI to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable Purchase order, contract or other agreement.

## **7. INDEMNIFICATION**

**7.1 INDEMNIFICATION OF SUBSCRIBER BY CTI.** CTI shall defend at its expense any third party notices, allegations, claims, suits, or proceedings ("**Claim**") against Subscriber and its Affiliates, and their respective directors, shareholders, officers, agents, employees, permitted successors and assigns, to the extent alleging that the use of any of the ChargePoint Services as permitted hereunder or the CTI Marks as furnished hereunder infringes or misappropriates the Intellectual Property Rights of any third party, and to pay costs and damages finally awarded in any such suit or agreed to by CTI in settlement with such third party (including reasonable attorney's fees and expenses), provided that CTI is notified promptly in writing of the suit and at CTI's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. CTI agrees that it shall not settle any Claim unless Subscriber and its Affiliates, as applicable, are unconditionally released from any liability as part of any settlement. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any Intellectual Property Rights by the combination of a product (including the ChargePoint Services) furnished by CTI with other elements not furnished by CTI if such infringement would have been avoided by the use of the CTI product (including in conjunction with the CTI furnished ChargePoint Services) alone.

**7.2 INDEMNIFICATION OF CTI AND THE NETWORK OPERATOR BY SUBSCRIBER.** Subscriber shall defend CTI, the Network Operator, and their respective distributors, authorized agents, directors, shareholders, officers, agents, employees, permitted successors and assigns against any Claim brought by a third party (i) as a result of Subscriber's negligence or willful misconduct or (ii) alleging that Subscriber's or any of its Affiliates' use of the ChargePoint Network or ChargePoint Services in violation of this Agreement infringes or misappropriates the Intellectual Property Rights of any third party or violates applicable law, and to pay costs and damages finally awarded in any such suit or agreed to by Subscriber in settlement with such third party (including reasonable attorney's fees and expenses), provided that Subscriber is notified promptly in writing of the suit and at Subscriber's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same.



Subscriber agrees that it shall not settle any Claim unless CTI, the Network Operator, and their respective distributors and/or other authorized representatives, as applicable, are unconditionally released from any liability as part of any settlement.

**7.3 LIMITATION OF LIABILITY.** Except for liability for indemnification against third party claims for infringement or misappropriation of intellectual property rights, the Network Operator and CTI's aggregate liability under this Agreement shall not exceed the aggregate Subscription Fees paid by Subscriber to the Network Operator in the calendar year prior to the event giving rise to the Claim. THE FOREGOING DOES NOT LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS FOR THE PURCHASED CHARGEPOINT SERVICES.

**7.4 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CTI, THE NETWORK OPERATOR OR THEIR RESPECTIVE DISTRIBUTORS OR OTHER AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT AND EVEN IF CTI, THE NETWORK OPERATOR OR THEIR RESPECTIVE DISTRIBUTORS, OTHER AUTHORIZED REPRESENTATIVES, SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**7.5 EXCLUSIVE REMEDY.** The foregoing states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party with respect to any Claim described in this Section 7.

**7.6 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS.** None of CTI, the Network Operator, any of their respective distributors, other authorized representatives, or Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions whatever the cause; (ii) interruptions in wireless or cellular service linking Networked Charging Stations to the ChargePoint Network; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; or (iv) interruptions in services provided by any Internet service provider not affiliated with CTI or the Network Operator. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

## **8. TERM AND TERMINATION.**

**8.1 TERM OF AGREEMENT.** This Agreement shall become effective on the date of acceptance and continues until all Subscriptions (including any automatic renewals thereof) purchased by Subscriber have been terminated or otherwise have expired.

**8.2 TERM OF PURCHASED SUBSCRIPTIONS.** Subscriptions purchased by Subscriber commence on the start date specified in the Purchase Order and shall continue for the applicable Subscription Term specified therein for each Subscription or until the Purchased ChargePoint Services provided pursuant to any Subscription are otherwise terminated, changed or canceled by the Network Operator or Subscriber as allowed by the terms and conditions set forth herein.

**8.3 AUTOMATIC RENEWAL OF SUBSCRIPTIONS.** Unless otherwise specified in the applicable Purchase Order, all purchased Subscriptions shall automatically be renewed for a period equal to that of the expiring Subscription, unless either party gives the other notice of non-renewal not less than thirty (30) days prior to the schedule expiration date for the relevant Subscription Term. The per-unit pricing for any renewal term shall be the same as during the prior term unless the Network Operator shall have given Subscriber notice to the email address for the Subscriber Account that Subscriber has provided hereunder of any increase in pricing for Subscriptions not less than thirty (30) days prior to the end of such expiring Subscription, in which case the price increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed ten percent (10%) over the pricing for the relevant Purchased ChargePoint Services in the prior term, unless the pricing for such expiring Subscription was designated in the applicable Purchase Order as promotional or a one-time offer.

#### **8.4 TERMINATION.**

**(a) BY THE NETWORK OPERATOR.** This Agreement and the Purchased ChargePoint Services furnished hereunder may be immediately suspended or terminated: (i) if Subscriber is in material violation of any of Subscriber's obligations under this Agreement, provided, that Subscriber shall be given written notice of such violation and if cured within thirty (30) days of such notice, any suspension or termination of Purchased ChargePoint Services shall be restored and this Agreement shall continue in effect, (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors, (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review, or (iv) if, pursuant to the terms of this Agreement, the Network Operator is permitted the right to terminate upon the occurrence of an event or events.

**(b) BY SUBSCRIBER.** This Agreement may be terminated by Subscriber for cause: (i) upon thirty (30) days written notice given to the Network Operator alleging a material breach of this Agreement and the alleged breach remains unremedied at the expiration of such period, or (ii) the Network Operator becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors. This Agreement may be terminated by Subscriber upon the voluntary deactivation and removal from registration via the applicable Network Web Portal of all Networked Charging Stations owned by Subscriber and its Affiliates from the ChargePoint Network, at which time this Agreement shall terminate effective immediately; provided, that Subscriber shall not be entitled to any refund of prepaid Subscription Fees as a result of such termination.

**8.5 REFUND OR PAYMENT UPON TERMINATION.** Upon any termination of this Agreement for cause by Subscriber pursuant to Section 8.4(b)(i), or (ii) or the election of the Network Operator to terminate this Agreement pursuant to Section 8.4(a)(iii), the Network Operator shall refund to Subscriber the pro-rata portion of any pre-paid Subscription Fees for the remainder of the applicable Subscription Term for all Subscriptions after the effective date of termination. Upon any termination for cause by the Network Operator pursuant to Section 8.4(a)(i), (ii) or (iv) or upon the voluntary removal from registration and activation of all of Subscriber's Network Charging Stations from the ChargePoint Network, Subscriber shall pay any unpaid Subscription Fees covering the remainder of the Subscription Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Subscription Fees or Session Processing Fees for any period prior to the termination date.

9. **AMENDMENT OR MODIFICATION.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by the party against whom the amendment, modification or waiver is to be asserted; *provided*, that subject to any applicable Purchase Order the Network Operator may change the Session Authorization Fee and/or the Session Processing Fee as provided in **Schedule 1**.

10. **WAIVER.** The failure of either Party at any time to require performance by the other Party of any obligation hereunder will in no way affect the full right to require such performance at any time thereafter. The waiver by either Party of a breach of any provision hereof will not constitute a waiver of the provision itself. The failure of either Party to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights. No waiver will be effective unless in writing and signed by an authorized representative of the Party against whom such waiver is sought to be enforced. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.

11. **FORCE MAJEURE.** Except with respect to payment obligations, neither the Network Operator nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence (a "**Force Majeure Event**"). A Force Majeure Event will include, but not be limited to, fire, flood, earthquake or other natural disaster (irrespective of such party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

11. **APPLICABLE LAW.** This Agreement will be construed, and performance will be determined, according to the laws of the State of California without reference to such state's principles of conflicts of law (the "**Applicable Law**") and the state and federal courts of California shall have exclusive jurisdiction over any claim arising under this Agreement.

12. **WAIVER OF JURY TRIAL.** Each Party hereby waives any right to jury trial in connection with any action or litigation arising out of this Agreement.

13. **SURVIVAL.** Those provisions dealing with the Intellectual Property Rights of CTI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto as contemplated hereby.

14. **SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby. If, however such invalidity or unenforceability will, in the reasonable opinion of either Party cause this Agreement to fail of its intended purpose and the Parties cannot by mutual agreement amend this Agreement to cure such failure, either Party may terminate this Agreement for cause as provided herein above.

15. **ASSIGNMENT.** Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the Network Operator (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section 15, the Network Operator shall be entitled, at its sole discretion, to terminate this Agreement upon written

notice given to Subscriber. In the event of such a termination, Subscriber shall pay any unpaid Subscription Fees covering the remainder of the Subscription Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Subscription Fees or Session Processing Fees for any period prior to the termination date. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CTI and the Network Operator may each assign its rights and obligations under this Agreement. Within ninety (90) days of any such assignment, CTI or the Network Operator, as the case may be, shall provide written notice to Subscriber of the fact of such assignment.

**16. NO AGENCY OR PARTNERSHIP CREATED BY THIS AGREEMENT.** CTI, in the performance of this Agreement, and in its role as the Network Operator, is an independent contractor. In performing its obligations under this Agreement, CTI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CTI and any Subscriber to be created by this Agreement.

**17. ENTIRE AGREEMENT.** This Agreement, **Schedule 1** and the applicable Purchase Orders of Subscriber contain the entire agreement between the Parties and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings in respect to the subject matter hereof. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any Purchase Order, this Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation (excluding **Schedule 1** and Purchase Orders) shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

**18. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

**COULOMB TECHNOLOGIES, INC.**

**Praveen K. Mandal, President**

**SUBSCRIBER:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**On Behalf of:**

\_\_\_\_\_  
(Print Name of Company or Other Legal Entity)

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-Mail Address for Notices: \_\_\_\_\_

\_\_\_\_\_

**(Please complete Appendix A if signing up for Flex Billing Service.)**

**Schedule 1: Subscriber Session Transaction Fee Schedule<sup>1</sup>**

| <b><u>Fee Schedule</u></b>                   | <b><u>For Each Charging Session using ChargePass Card</u></b> | <b><u>For Each Charging Session Using Credit Card</u></b> |
|----------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------|
| <b>Session Authorization Fee<sup>2</sup></b> | \$0.50 per Session                                            | \$0.50 per Session                                        |
| <b>Session Processing Fee<sup>3</sup></b>    | 7.5% of Session Fees                                          | 7.5% of Session Fees                                      |

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<sup>1</sup> Subscriber is required to separately subscribe for the ChargePoint™ Network Standard Service in order to activate its Charging Stations on the ChargePoint™ Network.

<sup>2</sup> The Session Authorization Fee may not be increased more than once in any twelve (12) month period nor more than the greater of (i) ten percent (10%) or (ii) the Consumer Price Index rate of change promulgated by the United State Bureau of Labor Statistics with respect to the 12-month period just then ended when any notice of change is given by CTI to Subscribers.

<sup>3</sup> CTI may increase the Session Processing Fee payable pursuant to this Agreement at any time after July 1, 2011, upon not less than one hundred eight (180) days notice (the “**Notice Period**”) given by electronic notice posted to the Subscriber Portal and sent to each individual Subscriber Account, and any such change shall thereafter be binding and enforceable with respect to Subscriber after the expiration of such Notice Period; provided, further, that the Session Processing Fee may not be increased by more than one percentage point in any twelve (12) month period, nor in the aggregate, increased to more than twenty percent (20.00%) of Session Fees at any time.

### **Appendix A: Account Information Form for Flex Billing Services**

Complete and fax this form to Coulomb Technologies Sales Operations (+1-214-716-1244) to sign up for Flex Billing services. All fields are required (except where noted).

#### **Business Info**

Business Legal Name: \_\_\_\_\_

Business Legal Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Business Federal Tax ID: \_\_\_\_\_

#### **Individual Point of Contact**

Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

Contact Fax: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

#### **Bank Account Info**

Bank Name: \_\_\_\_\_

Bank Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Bank Routing number or Swift Code: \_\_\_\_\_

Bank's Account number (if applicable): \_\_\_\_\_

Business's Account Number: \_\_\_\_\_

Business's Account Name: \_\_\_\_\_  
(Remit To Name, if different than Business Legal Name)

Business's Account Address: \_\_\_\_\_  
(Remit To Address, if different than Business Legal Address)

Business's Federal Tax ID: \_\_\_\_\_  
(if Remit To Entity is if different than Business Legal Entity)

#### **Additional Information (for Non-US Customers Only)**

Intermediary Bank Name: \_\_\_\_\_

Intermediary Bank Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Intermediary Bank Routing or Swift Code: \_\_\_\_\_

Intermediary Bank' Account number if applicable: \_\_\_\_\_

Commission Meeting Date: February 22, 2011

Date: February 14, 2011  
To: Honorable Mayor & City Commission  
From: Planning & Economic Development Department  
RE: Shoreline Spectacular Request- Labor Day  
Weekend 2011

---

**SUMMARY OF REQUEST:** In accordance with our recently amended Special Events Policy, “applicants requesting a Special Events Liquor License for Labor Day events must go before the City Commission for approval”. The Shoreline Spectacular is requesting approval for their event. The Police Department has not approved their request for a temporary liquor license.

**FINANCIAL IMPACT:** The Shoreline Foundation, which runs Shoreline Spectacular, has an outstanding invoice (#9845846) for their 2010 event. It is City policy that all current charges owed to the City must be paid prior to holding another event.

**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** To deny the request for the Shoreline Spectacular event in 2011, due to the fact that their invoice from 2010 has not been paid and the Police Department has not approved their request for a temporary liquor license.





Sept 2-5, 2011  
RECEIVED

SEP 08 2010

CITY OF MUSKEGON  
PLANNING DEPARTMENT

### City of Muskegon Request for Special Event

AS OF JANUARY 2010 - ALL requests for temporary liquor licenses must be submitted to the Muskegon Police Department for processing. Muskegon Police can be reached at 231.724.6750

*An Administrative Fee per the schedule below must be submitted with each Event application:*

**Fee Schedule:** \$50.00 Fee for applications submitted 60 days or more prior to the event date  
\$150.00 Fee for applications submitted 59-45 days prior to the event  
\$250.00 Fee for applications submitted 44-30 days prior to the event  
\$450.00 Fee for applications submitted 29 days prior to the event  
First time organizations (not events) may be exempt from any late fees.  
Failure to apply sixty days prior to the event date is cause to deny the request.

Please fill out this form and return with payment to the Planning Department, P.O. Box 536, 933 Terrace St., Muskegon, MI 49443-0536. Telephone: (231) 724-6702 (Fax) (231) 724-6790

Applicant Organization Shoreline Spectacular / Shoreline Foundation Inc

#### Applicant Contact Information

Contact Person Pamela Carey  
Address 2743 Henry St 115 City Muskegon State MI Zip 49441  
Daytime Phone 231-755-3322 Alt. Contact # 231-855-0938  
E-Mail address pamela@shoreline-spectacular.com

#### Event Information

Special Event Title Shoreline Spectacular  
Description of Event Carnivals, Picnics, Entertainment, Contests, Vendors, Festival (4 day annual event) Beverage Tent, Car + motorcycle show.  
Location of Event Western Ave b/w 8th and 2nd / Hackley Park  
Reason for Event Annual Festival to raise money for charities  
Date(s) of Event Sept 2 - Sept 5 2011

(Day 1) Hours of the Event/Start Time 8:00 AM End Time 12:00 AM

(Day 2) Hours of the Event/Start Time 8:00 AM End Time 12:00 AM

(Day 3) Hours of the Event/Start Time 8:00 AM End Time 12:00 AM

Day 4 hours of Event start 8:00 AM End Time 7:00 pm

Will there be alcohol at the event? Yes X No     

If Yes, indicate name of non-profit you are working with: Shoreline Foundation Inc.

If Yes, you must submit a temporary liquor license request to the Muskegon Police Department for processing.

Anticipated crowd size 10,000 Will City Streets or Sidewalks be used? Yes X No     

If yes -Do they need to be closed? Yes X No

Which streets/intersections are you requesting to be closed? (Approval of DPW and Police will be required)

Western Avenue, (6<sup>th</sup>, 5<sup>th</sup>, 4<sup>th</sup>, 3<sup>rd</sup>, 2<sup>nd</sup> b/w Clay +  
western and b/w western + Shoreline Dr)

Will any other City services be needed?\* (picnic tables, trash cans, etc) Yes \_\_\_\_\_ No X

**\*IMPORTANT:** If you are requesting City services for your event (tables, barricades, etc) you **MUST** include "Part B" of the Special Event Application, indicating which services you are requesting. Please note there may be an additional charge for City services provided.

Has your organization filed for a Special Event Permit with Leisure Services before for this event?

Yes\* X No \_\_\_\_\_ \*If yes, please list last year filed 2010

Are there any changes in your request from previous years? Yes X No \_\_\_\_\_

If yes, please use this area to indicate any changes. Failure to notify the City of any changes from previous years is cause for denial. (Attach additional sheets if necessary)

the addition of 3rd + 2nd Street Closure - The use of  
Hackley Park all 4 days.

Name of Insurance Company Strategic Insurance

\*\* Where the event is being held on City-owned or controlled property the applicant shall provide an amount of insurance as set by the City for liquor liability and general liability insurance, naming the City as an additional insured. The language should read similar to the following: The CITY OF MUSKEGON, all elected and appointed officials, employees, volunteers, and others working on behalf of the CITY OF MUSKEGON is named additional insured. An acceptable certificate of insurance must be submitted prior to final approval. \*\*

#### Regulations of the license/permit:

1. All rules and regulations of the City of Muskegon Special Events Policy shall be complied with.
2. All City of Muskegon Ordinances shall be complied with.
3. The licensee will save the City of Muskegon harmless from all claims.
4. A proof of liability insurance is required. A copy of the Certificate of Insurance naming the City of Muskegon as additional insured is required before the permit can be approved.

With my signature, I certify that I have read and understand the regulations of this permit. I also understand that City staff may require a meeting with applicant organization to help clarify the requests for services. Failure to attend the meeting could result in the denial of the request.

Farida M. Cury  
 Signature of Applicant

9/8/2010

Date

Date Received in Office

Staff Signature

#### \*\*\*\*\* City Use Only \*\*\*\*\*

Proof of Insurance Received \_\_\_\_\_ S/E Database Entry 9-8-10 Notification/ PDF X  
 Work Order # 88 Processed by: DL Police X  
 DPW X  
 Parks X  
 Fire X

INTERNAL REVENUE SERVICE  
P. O. BOX 2568  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **AUG 27 2010**

SHORELINE FOUNDATION INC  
C/O KEITH L MCEVOY  
PO BOX 786  
MUSKEGON, MI 49443

Employer Identification Number:  
27-2089378  
DLN:  
300118007  
Contact Person:  
JACOB A MCDONALD ID# 31649  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990 Required:  
Yes  
Effective Date of Exemption:  
March 26, 2010  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Letter 947 (DO/CG)

**Shoreline Spectacular**

web format

| <b>Event Information</b>                                                       |                                                                                                                 |                             |                                    |                                        |                     |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|---------------------|
| <b>event date</b>                                                              | 9/2/2011 to 9/5/2011                                                                                            | <b>length</b>               | 4 days                             | <b>app date</b>                        | 9/8/2010            |
| <b>location</b>                                                                | Western Ave between 7th & 2nd St + Hackley Park                                                                 | <b>start/end time</b>       | 8:00 am / 12:00 am                 | <b>crowd size</b>                      |                     |
| <b>description</b>                                                             | beer tent, music, vendors, contests, car & motorcycle show                                                      |                             |                                    | <b>work order</b>                      | 88                  |
| <b>app. fee</b>                                                                | 50.00                                                                                                           |                             |                                    |                                        |                     |
| <b>comments</b>                                                                | with alcohol. Changes from 2010--the addition of 3rd & 2nd St. closures and the use of Hackley Park all 4 days. |                             |                                    |                                        |                     |
| <b>Organization Information</b>                                                |                                                                                                                 |                             |                                    |                                        |                     |
| <b>name</b>                                                                    | Shoreline Foundation Inc                                                                                        | <b>contact</b>              | Pamela Carey                       | <b>insurance</b>                       | Strategic Insurance |
| <b>address</b>                                                                 | 2743 Henry St., Ste 115 Muskegon MI 49441                                                                       | <b>phone</b>                | Day:231-755-3322 Home:231-855-0938 |                                        |                     |
| <b>Event Details</b>                                                           |                                                                                                                 |                             |                                    |                                        |                     |
| <b>alcohol:</b> yes <b>id checked:</b> trained volunteers                      |                                                                                                                 |                             |                                    |                                        |                     |
| <b>services required:</b> Yes                                                  |                                                                                                                 |                             |                                    |                                        |                     |
| <b>streets walks:</b> Western Ave & side streets from 7th to 2nd; Hackley Park |                                                                                                                 |                             |                                    |                                        |                     |
| <b>Approvals</b>                                                               |                                                                                                                 |                             |                                    |                                        |                     |
| <b>engineering</b> - \$0.00                                                    |                                                                                                                 | <b>inspections</b> - \$0.00 |                                    | <b>zoning</b> - \$0.00                 |                     |
| <b>treasurer</b> - \$0.00                                                      |                                                                                                                 | <b>fire</b> ✕ \$0.00        |                                    | <b>clerk</b> - \$0.00                  |                     |
| <b>parks</b> - \$0.00                                                          |                                                                                                                 | <b>dpw</b> - \$0.00         |                                    | <b>traffic</b> - \$0.00                |                     |
| <b>manager</b> - \$0.00                                                        |                                                                                                                 | <b>police</b> ✕ \$0.00      |                                    | <b>leisure services board</b> - \$0.00 |                     |
| <b>final approval</b> - \$0.00                                                 |                                                                                                                 |                             |                                    |                                        |                     |
| <b>estimated total cost</b> \$0.00                                             |                                                                                                                 |                             |                                    |                                        |                     |

**Shoreline Spectacular | 9/2/2011****Special Events Discussion**

|             |                        |
|-------------|------------------------|
| <div></div> | <div>add message</div> |
|-------------|------------------------|

| message                                                                                                  | date      | username       |
|----------------------------------------------------------------------------------------------------------|-----------|----------------|
| Will not authorize temporary liquor license.<br>Request further staff discussion. ALK/ml<br>[4:17:24 PM] | 2/10/2011 | MSK\mark.lewis |

[login](#)

## Leafers, Diane

---

**From:** Sayles, Doug  
**Sent:** Friday, February 11, 2011 3:08 PM  
**To:** Leafers, Diane  
**Cc:** Al-Shatel, Mohammed  
**Subject:** RE: Shoreline Spec app 2011

Diane,

I am not recommending the closure of Western Avenue between 3rd and 2nd streets nor the traffic circle. I would not have a problem with Western from 3rd (keeping the traffic circle open) to 7th (also keeping 7th street open), although they will need to gain access (request from LC Management group) behind the LC Walker Arena for the Amazon building access, as 4th at Western would be blocked, along with 5th at Western.

-----Original Message-----

**From:** Leafers, Diane  
**Sent:** Thursday, February 10, 2011 3:08 PM  
**To:** Special Events Approval  
**Subject:** FW: Shoreline Spec app 2011  
**Importance:** High

Hello,

I'm sending this special event application around again for any comments before it goes before the City Commission to request approval.

Please access the special event database ASAP and note any comments/concerns. I've been asked to get this on the Commission agenda soon.

Thank you!

Diane

-----Original Message-----

**From:** planningcopier@xerox.com [mailto:planningcopier@xerox.com]  
**Sent:** Thursday, February 10, 2011 3:02 PM  
**To:** Leafers, Diane  
**Subject:** Shoreline Spec app 2011

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: machine location not set  
Device Name: ColorQube 9201

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

Commission Meeting Date: February 22, 2011

Date: February 14, 2011  
To: Honorable Mayor & City Commission  
From: Planning & Economic Development Department  
RE: Breakwater Festival Request- Labor Day  
Weekend 2011

---

SUMMARY OF REQUEST: In accordance with our recently amended Special Events Policy, "applicants requesting a Special Events Liquor License for Labor Day events must go before the City Commission for approval". The Breakwater Festival is requesting approval for their event.

FINANCIAL IMPACT: Any costs will be paid by the Breakwater Festival.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: None.





Sept. 5-5, 2010  
RECEIVED

SEP 07 2010

CITY OF MUSKEGON  
PLANNING DEPARTMENT

### City of Muskegon Request for Special Event

AS OF JANUARY 2010 - ALL requests for temporary liquor licenses must be submitted to the Muskegon Police Department for processing. Muskegon Police can be reached at 231.724.6750

*An Administrative Fee per the schedule below must be submitted with each Event application:*

**Fee Schedule:** \$50.00 Fee for applications submitted 60 days or more prior to the event date  
\$150.00 Fee for applications submitted 59-45 days prior to the event  
\$250.00 Fee for applications submitted 44-30 days prior to the event  
\$450.00 Fee for applications submitted 29 days prior to the event  
First time organizations (not events) may be exempt from any late fees.  
Failure to apply sixty days prior to the event date is cause to deny the request.

Please fill out this form and return with payment to the Planning Department, P.O. Box 536, 933 Terrace St., Muskegon, MI 49443-0536. Telephone: (231) 724-6702 (Fax) (231) 724-6790

Applicant Organization Muskegon Festival Group of Muskegon County

Applicant Contact Information

Contact Person Cathy Harris / Norm Cunningham

Address 1380 Ridge Ave. City Muskegon State MI Zip 49441

Daytime Phone 231-740-5653 Alt. Contact # 231-206-6003

E-Mail address chatcathy@hotmail.com / norm1sr@hotmail.com

Event Information

Special Event Title Breakwater Festival,

Description of Event Festival + Entertainment Tent

Location of Event Pere Marquette Beach & Margaret-Drake Elliot Park + Parking lot

Reason for Event Raise money for Pere Marquette Improvement Fund

Date(s) of Event August 31<sup>st</sup> - September 6<sup>th</sup> 2011

Sept. 2 (Day 1) Hours of the Event/Start Time 10AM End Time 11pm

Sept. 3 (Day 2) Hours of the Event/Start Time 8AM End Time 11pm

Sept 4 (Day 3) Hours of the Event/Start Time 8AM End Time 11pm  
Sept 5 8AM 7pm

Will there be alcohol at the event? Yes X No     

If Yes, indicate name of non-profit you are working with: M.F.G. + Red Cross

If Yes, you must submit a temporary liquor license request to the Muskegon Police Department for processing.

Anticipated crowd size 5000 Will City Streets or Sidewalks be used? Yes X No     

No street closings at this time If yes -Do they need to be closed? Yes X No X  
By event



Which streets/intersections are you requesting to be closed? (Approval of DPW and Police will be required)

Road & Sidewalks within & around Margarette Drake-Elliott Park. Large <sup>and small</sup> Parking Lot on Beach St. (Large Area & Small)

Will any other City services be needed?\* (picnic tables, trash cans, etc)

Yes X No \_\_\_\_\_

**\*IMPORTANT:** If you are requesting City services for your event (tables, barricades, etc) you **MUST** include "Part B" of the Special Event Application, indicating which services you are requesting. Please note there may be an additional charge for City services provided.

Has your organization filed for a Special Event Permit with Leisure Services before for this event?

Yes\* X No \_\_\_\_\_

\*If yes, please list last year filed 2010

Are there any changes in your request from previous years? Yes X No \_\_\_\_\_

If yes, please use this area to indicate any changes. Failure to notify the City of any changes from previous years is cause for denial. (Attach additional sheets if necessary)

Asking for large parking lot to be added along with Margarette Drake-Elliott park and lot. Including sidewalks, thru street & all Pavillions.

Name of Insurance Company SAME AS 2010 Event

**\*\* Where the event is being held on City-owned or controlled property the applicant shall provide an amount of insurance as set by the City for liquor liability and general liability insurance, naming the City as an additional insured. The language should read similar to the following: The CITY OF MUSKEGON, all elected and appointed officials, employees, volunteers, and others working on behalf of the CITY OF MUSKEGON is named additional insured. An acceptable certificate of insurance must be submitted prior to final approval. \*\***

#### Regulations of the license/permit:

1. All rules and regulations of the City of Muskegon Special Events Policy shall be complied with.
2. All City of Muskegon Ordinances shall be complied with.
3. The licensee will save the City of Muskegon harmless from all claims.
4. A proof of liability insurance is required. A copy of the Certificate of Insurance naming the City of Muskegon as additional insured is required before the permit can be approved.

With my signature, I certify that I have read and understand the regulations of this permit. I also understand that City staff may require a meeting with applicant organization to help clarify the requests for services. Failure to attend the meeting could result in the denial of the request.

Cathy Harris  
Signature of Applicant

09/07/2010  
Date

\_\_\_\_\_  
Date Received in Office

\_\_\_\_\_  
Staff Signature

#### \*\*\*\*\* City Use Only \*\*\*\*\*

Proof of Insurance Received \_\_\_\_\_ S/E Database Entry \_\_\_\_\_ Notification/PDF \_\_\_\_\_

Work Order # \_\_\_\_\_ Processed by: \_\_\_\_\_

Police \_\_\_\_\_  
DPW \_\_\_\_\_  
Parks \_\_\_\_\_  
Fire \_\_\_\_\_

**Breakwater Festival**

web format

| <b>Event Information</b>                                                                                                          |                                             |                             |                                    |                                        |          |
|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|----------|
| <b>event date</b>                                                                                                                 | 9/2/2011 to 9/5/2011                        | <b>length</b>               | 4 days                             | <b>app date</b>                        | 9/2/2011 |
| <b>location</b>                                                                                                                   | Margaret Drake Elliott Park, Pere Marquette | <b>start/end time</b>       | 8:00 am / 11:00 pm                 | <b>crowd size</b>                      |          |
| <b>description</b>                                                                                                                | beer tent, concerts, kids games, etc        |                             |                                    | <b>work order</b>                      | 89       |
| <b>app. fee</b>                                                                                                                   | 50.00                                       |                             |                                    |                                        |          |
| <b>comments</b>                                                                                                                   | 2nd annual event; with alcohol              |                             |                                    |                                        |          |
| <b>Organization Information</b>                                                                                                   |                                             |                             |                                    |                                        |          |
| <b>name</b>                                                                                                                       | Muskegon Festival Group of Muskegon County  | <b>contact</b>              | Cathy Harris / Norm Cunningham     | <b>insurance</b>                       |          |
| <b>address</b>                                                                                                                    | 1380 Ridge Ave Muskegon MI 49441            | <b>phone</b>                | Day:231-740-5653 Home:231-206-6003 |                                        |          |
| <b>Event Details</b>                                                                                                              |                                             |                             |                                    |                                        |          |
| <b>alcohol:</b> yes <b>id checked:</b> trained volunteers                                                                         |                                             |                             |                                    |                                        |          |
| <b>services required:</b> barricades, tables, pavilions                                                                           |                                             |                             |                                    |                                        |          |
| <b>streets walks:</b> streets & parking lots at Margaret Drake Elliott Park, also the Ovals parking lot across from the snack bar |                                             |                             |                                    |                                        |          |
| <b>Approvals</b>                                                                                                                  |                                             |                             |                                    |                                        |          |
| <b>engineering</b> - \$0.00                                                                                                       |                                             | <b>inspections</b> - \$0.00 |                                    | <b>zoning</b> ✓ \$0.00                 |          |
| <b>treasurer</b> - \$0.00                                                                                                         |                                             | <b>fire</b> ✓ \$0.00        |                                    | <b>clerk</b> - \$0.00                  |          |
| <b>parks</b> - \$0.00                                                                                                             |                                             | <b>dpw</b> ✓ \$0.00         |                                    | <b>traffic</b> ✓ \$0.00                |          |
| <b>manager</b> - \$0.00                                                                                                           |                                             | <b>police</b> - \$0.00      |                                    | <b>leisure services board</b> - \$0.00 |          |
| <b>final approval</b> - \$0.00                                                                                                    |                                             |                             |                                    |                                        |          |
| <b>estimated total cost</b> \$0.00                                                                                                |                                             |                             |                                    |                                        |          |

✓ = Approved