# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JANUARY 26, 2010

### 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. Expense for Storm Water Phase II Compliance for 2010.** PUBLIC WORKS
  - **C. Transportation Improvements Program Submittal for 2013-2014 Projects.** ENGINEERING
  - **D. Engineering Services Agreement to Convert Traffic Signals on Laketon at Hoyt, Getty and Roberts to Box Span Signals.** ENGINEERING
  - **E. Energy Evaluation Proposal – Engineering Services Agreement.** ENGINEERING
  - **F. Senior Nutrition Program, AgeWell Services of West Michigan (AWS) and City of Muskegon Agreement.** PLANNING & ECONOMIC DEVELOPMENT
  - **G. City – MDOT Agreement for Engineering Modification/Upgrade Traffic Signals along Laketon Avenue.** ENGINEERING
- **PUBLIC HEARINGS:**
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**

**A. <u>Roosevelt Park Water & Sewer Systems Operation Agreement.</u>** CITY MANAGER

**B. <u>Marsh Field Management Agreement.</u>** PUBLIC WORKS

- **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: January 26, 2010

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 for the January 4th Organizational Meeting, the January 11th Commission Worksession, and the January 12th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON
# ORGANIZATIONAL MEETING
# JANUARY 4, 2010
# CITY COMMISSION CHAMBERS
# CITY HALL 5:30 P.M.
# Minutes

The meeting was called to order by Mayor Warmington at 5:30 p.m. Also present were Commissioners Wierengo, Carter, Shepherd, Gawron, Wisneski, and Spataro.

The meeting opened with prayer given by Department of Public Works Director Robert Kuhn, followed by the Pledge of Allegiance.

**2010-01**

A. **Oath of Office Ceremony.** Honorable Andrew Wierengo, III, Judge for Muskegon County gave the oath of office to Mayor Warmington and Commissioners Gawron and Wierengo.

B. **Election of Vice-Mayor.** Motion by Spataro, seconded by Shepherd to elect Steven J. Gawron as Vice Mayor.

   VOTE: 7 Yeas 0 Nays Motion Passed

C. **Setting City Commission Meetings: 5:30 p.m. – 2nd and 4th Tuesdays each month and the Worksession Meetings: 5:30 p.m. Monday preceding the 2nd Tuesday each month.** Motion by Carter, seconded by Wierengo to set City Commission dates for every 2nd and 4th Tuesday of each month at 5:30 p.m. and to set Worksession meetings for the Mondays preceding the 2nd Tuesday of each month at 5:30 p.m.

   VOTE: 7 Yeas 0 Nays Motion Passed

D. **Appointment of City Manager: Bryon L. Mazade.** Motion by Gawron, seconded by Carter to appoint Bryon L. Mazade as City Manager.

   VOTE: 7 Yeas 0 Nays Motion Passed

E. **Appointment of City Clerk: Ann M. Becker.** Motion by Carter, seconded by Spataro to appoint Ann M. Becker as City Clerk.

   VOTE: 7 Yeas 0 Nays Motion Passed

F. **Appointment of City Treasurer: Derrick Smith**. Motion by Carter, seconded by Wierengo to appoint Derrick Smith as City Treasurer.

VOTE: 7 Yeas 0 Nays Motion Passed

**G. Appointment of City Auditor**: **Timothy Paul.** Motion by Carter, seconded by Shepherd to appoint Timothy Paul as City Auditor.

VOTE: 7 Yeas 0 Nays Motion Passed

**H. Appointment of City Assessor and Deputy Assessors:** Motion by Spataro, seconded by Wierengo to appoint the County Equalization Director Donna Stokes and Deputy Director Dan VanderKooi as the City Assessor and Deputy Assessor.

VOTE: 7 Yeas 0 Nays Motion Passed

**I. Designation of City Fund Depositories.** Motion by Gawron, seconded by Spataro to designate the following financial institutions as the official depositories of the City Funds:

Fifth-Third Bank (Main Depository)
Huntington Bank
Comerica Bank
National City Bank

VOTE: 7 Yeas 0 Nays Motion Passed

**J. Designation of Firm to Act as Legal Counsel: Parmenter-O'Toole.** Motion by Spataro, seconded by Carter to designate the firm of Parmenter-O'Toole as legal counsel for the City of Muskegon.

VOTE: 7 Yeas 0 Nays Motion Passed

**K. Creating Additional Precinct in Ward 1.** Motion by Spataro, seconded by Wierengo to add a precinct at Muskegon Community College as outlined in the resolution and map.

VOTE: Ayes: Spataro, Warmington, Wierengo, Wisneski, Carter, Gawron, and Shepherd. Nays: None. Motion Passed

**L. Review of Costs for Fire Services Mutual Aid.** The City Manager will report on this at the January 12, 2010 Commission meeting.

Meeting adjourned at 5:48 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

City of Muskegon
City Commission Worksession
January 11, 2010
City Commission Chambers
5:30 PM

# MINUTES

2010-2
Present: Commissioners Warmington, Wierengo, Shepherd, Spataro, Carter, Wisneski, and Gawron.
Absent: None.

**Presentation by Management of LC Walker Arena. - REMOVED**

**Muskegon Township Fire Proposal.**
Commissioners recommended that the City of Roosevelt Park, Muskegon Township, and City of Muskegon Heights meet to see if there is a plan that could be beneficial to all involved.

It was agreed that the City of Muskegon will wait for a decision from Roosevelt Park before moving forward.

**Goal Setting Meeting – Set Date.**
A date of February 11, 2010 is a possibility. The City Manager will email possible dates and a final date will be determined.

**Any Other Business.**
Dennis McKee of Consumers Energy came forward to answer any questions regarding the recent press release that the local BC Cobb Plant may close in the next few years. It is not determined if the plant will actually close at this time.

Public comments were received.

**Adjournment.**
**Motion by Commissioner Carter, seconded by Vice Mayor Gawron to adjourn at 6:18 p.m.**

***MOTION PASSES***

_____
**Ann Marie Becker, MMC**
**City Clerk**

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JANUARY 12, 2010

### CITY COMMISSION CHAMBERS @ 5:30 P.M.

## MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, January 12, 2010.

Mayor Warmington opened the meeting with a prayer from Pastor Tim Cross from the Living Word Church of Muskegon after which the Commission and public recited the Pledge of Allegiance to the Flag.

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

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

**2010-03 HONORS AND AWARDS:**

**A. Promoting Active Communities.**

Cathy Brubaker-Clarke presented to the Mayor and Commission the Silver Level Award for Promoting Active Communities. The City was awarded this on November 13, 2009, for taking steps to make it easier for residents to lead physically active lifestyles.

**2010-04 CONSENT AGENDA:**

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

SUMMARY OF REQUEST: To approve minutes for the December 7th Commission Worksession, and the December 8th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

**B. Approval of a Neighborhood Enterprise Zone Certificate.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: An application for a Neighborhood Enterprise Zone

(NEZ) certificate has been received from Clement Coulombe to rehabilitate a home in the Nelson neighborhood at 517 W. Webster Ave. The home is located in a Neighborhood Enterprise Zone. The application states that the estimated cost for rehabilitation will be around $100,000 for the replacement of windows, installation of wood siding, structural reinforcement, roofing, construction of a basement, doors, plumbing, HVAC, electrical, insulation, and many updates to the interior of the home. The applicant has met local and state requirements for the issuance of the NEZ certificate. Approval or denial by the City Commission is required within 60 days of the application date and must be forwarded to the State Tax Commission.

FINANCIAL IMPACT: Taxation will be 50% of the State average for the next 12 years.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve issuance of the NEZ certificate.

**C. Liquor License Request – Cindy's Food Marts, Inc., 812 W. Laketon.** CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Cindy's Food Marts, Inc. to transfer stock interest in the 2009 SDM licensed corporation wherein Richard D. Kamp transfers 1/10 share of stock to new stockholder Cindy L. Kamp.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

**D. Liquor License Transfer Request – Dave's House, LLC, 435 & 441 W. Western.** CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Dave's House, LLC to transfer the 2008 Class C Licensed Business (currently in escrow) with Dance-Entertainment Permit, located at 435 & 441 W. Western Avenue, from PCJ Enterprise, LLC to Dave's House, LLC.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

**E. Accept Resignations from Various Boards.** CITY CLERK

SUMMARY OF REQUEST: To accept resignations from Dan Rinsema-Sybenga from the Citizen's District Council and from Doug Beecham from the Equal Employment Opportunity Committee.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended approval at their January 11th meeting.

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

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

**Nays: None**

***MOTION PASSES***

**2010-05 NEW BUSINESS:**

**A. <u>Request to Apply for ADA Grant for Election Precincts.</u>** CITY CLERK

SUMMARY OF REQUEST: The State of Michigan is accepting grant applications from municipalities through January 22, 2010, to make polling places accessible. The Clerk's Office has contacted Inclusion Solutions, a company with vast experience and knowledge in the area, for a proposal.

FINANCIAL IMPACT: Total cost to make all polling places accessible in the City of Muskegon is estimated to be $20,436.55. It is unknown what the match might be if the City is chosen as a recipient.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends that the City Clerk be authorized to apply and sign for the grant application(s) on behalf of the City of Muskegon.

**Motion by Vice Mayor Gawron, second by Commissioner Spataro to authorize the City Clerk to apply and sign for the grant applications on behalf of the City of Muskegon for the ADA grant for election precincts.**

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

**Nays: None**

***MOTION PASSES***

**B. <u>Finance Department Changes.</u>** FINANCE

SUMMARY OF REQUEST: Staff is seeking approval to implement two changes that will allow the Finance Department to operate more efficiently. These changes include the upgrade of a position and the leasing of space at City Hall to the City's contractual accountant.

FINANCIAL IMPACT: $7,200 lease income; budget savings approximately $48,000.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Authorize staff to proceed with changes.

**Motion by Commissioner Spataro, second by Commissioner Wierengo to approve the recommended changes requested by the Finance Department.**

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

**Nays: None**

***MOTION PASSES***

**PUBLIC PARTICIPATION:** Various comments were heard from the public.

**ADJOURNMENT:** The City Commission Meeting adjourned at 5:42 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

Date: January 26, 2010

To: Honorable Mayor and City Commission

From: Department of Public Works

RE: Expense for Storm Water Phase II Compliance for 2010

SUMMARY OF REQUEST:

Authorize staff to commit to the Muskegon Area Municipal Storm Water Committee for the City's share of the proposed Mona Lake Watershed proposal of $13,029 to pay for the professional services necessary to develop the required storm sewer plans for MDEQ compliance.

FINANCIAL IMPACT: $13,029 is allocated for Contractual Services in the Storm Water Management Budget

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval

Date: January 26, 2010

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Transportation Improvements Program Submittal for:
2013-2014 Projects

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## SUMMARY OF REQUEST:

Authorize staff to submit the attached list of projects to the West Michigan Shoreline Regional Development Commission for inclusion in the FY 2013 – 2014 Transportation Improvement Program (TIP). Projects submitted will be considered for Federal and State transportation funding. Adoption of the attached resolution is required as part of the submittal to commit the local match should funds become available.

## FINANCIAL IMPACT:

None at this time; however, a local match will be required should we receive a grant for a particular project.

## BUDGET ACTION REQUIRED:

None

## STAFF RECOMMENDATION:

Approve the project submittal and resolution.

## COMMITTEE RECOMMENDATION:

Resolution No._____

RESOLUTION FOR AUTHORIZATION TO REQUEST THE WEST MICHIGAN SHORELINE REGIONAL DEVELOPMENT COMMISSION TO INCLUDE THE CITY'S PROJECTS IN THE 2013-2014 TRANSPORTATION IMPROVEMENT PROGRAM

WHEREAS, the Federal Transit Administration, the Federal Highway Administration and the Federal Aviation Administration, through the Intermodal Surface Transportation Efficiency Act of 1991; Act 51, P.A. 1951; and various other Federal and State acts, in cooperation with the Michigan Department of Transportation, makes funding available for local jurisdictions and agencies for transportation improvements projects; and

WHEREAS, the West Michigan Shoreline Regional Development Commission (WMSRDC) is the organization designated by the Governor as being responsible, together with the state, for carrying out provisions of 23 U.S.C. 134 (Federal Aid Planning Requirements) and the WMSRDC has deferred to the Muskegon Area Transportation Planning Program's (MATPP's) Policy Committee upon recommendation of the MATPP Technical Committee all matters of policy and approval related to transportation planning work programs, the long range transportation plan, and the Transportation Improvement Programs; and

WHEREAS, the WMSRDC is responsible, through the MATPP Advisory Committees (Technical and Policy), for implementing the federally required "3-C" urban transportation planning process, including the development of the transportation Improvement Program; and

WHEREAS, the 3-C planning process for Muskegon County has been certified according to the requirements of 25 CFR 450.114(c); and

WHEREAS, the City of Muskegon desires to secure financial assistance from the federal and/or State government to help defray the cost of the attached proposed transportation projects; and

WHEREAS, the required local match for the requested funding is available [or will be available] and committed to the proposed projects upon grant approval;

NOW, THEREFORE BE IT RESOLVED that the City of Muskegon requests the West Michigan Shoreline Regional Development Commission to consider inclusion of the projects in the priority list of Transportation Improvement Program for the Fiscal Years 2013-2014.

BY: _____
Stephen J. Warmington, Mayor

Attest: _____
Ann Marie Becker, Clerk

_____

Date

## THE CITY'S WISH LIST FOR 2013 - 2014 TIP

| Type of Fund | Roadway Name | length (ft) | Limits From | Limits To | Year | Estimated Cost | STP Federal share @ 80% | Local Share | Type of Improvements |
|---|---|---|---|---|---|---|---|---|---|
| ***2013 Projects*** | | | | | | | | | |
| STP | Sherman | 2640 | Estes | Glenside | 2013 | $600,000.00 | $300,800.00 | $299,200.00 | Reconstruction |
| STP | Laketon Ave. | 2200 | Wood | Getty | 2013 | $700,000.00 | $313,000.00 | $387,000.00 | Reconstruction |
| Sub-total | | | | | | **$1,300,000.00** | ***$613,800.00*** | **$686,200.00** | |
| ***2014 Projects*** | | | | | | | | | |
| STP | Terrace | 1600 | Apple | Western | 2014 | $899,000.00 | $719,200.00 | $179,800.00 | reconstruction |
| STP | Hackley | 3400 | Glen | Hudson | 2014 | $612,000.00 | $489,600.00 | $122,400.00 | reconstruction |
| STP | PortCity/Latimer | 3600 | Black Creek | Laketon | 2014 | $572,000.00 | $457,600.00 | $114,400.00 | major rehab. |
| Sub-Total | | | | | | **$2,083,000.00** | **$1,666,400.00** | **$416,600.00** | |

Date: January 26, 2010

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Engineering Services Agreement to convert Traffic Signals on Laketon @ Hoyt, Getty & Roberts to Box Span signals

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## SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Progressive A/E to perform the necessary design and preparation of specifications and construction to upgrade and convert three (3) traffic signals on Laketon @ Hoyt, Getty & Roberts to a box span signals to improve safety for a not to exceed fee of $17,411.45.

## FINANCIAL IMPACT:

Cost of surveying, design, specifications and construction engineering, $17,411.45. Most of this cost, $10,103.00 is funded by an MDOT grant.

## BUDGET ACTION REQUIRED:

None

## STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Progressive.

## COMMITTEE RECOMMENDATION:

Date: January 26, 2010

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Energy Evaluation Proposal – Engineering Services Agreement

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## SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Rhoades Engineering out of Norton Shores to perform energy saving evaluations for:

A- Smith Ryerson community building
B- McGraft Park building
C- City owned Street lights along Western Ave.
D- L.C. Walker score board

For a not to exceed fee of $16,500 for the design and specifications phase and a not to exceed fee of $14,400 for the construction inspection phase.

## FINANCIAL IMPACT:

A total of $30,900

## BUDGET ACTION REQUIRED:

None

## STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Rhoades Engineering

## COMMITTEE RECOMMENDATION:

## Energy Evaluation Proposals for:

McGraft Park, Smith Ryerson (Community Building) -
City Owned Street Lights (along Western) & L.C. Walker's score board

| **Firm's Name & Address** | **Proposed Fee ($) for:** | | **Total Fee** |
|---|---|---|---|
| | Evaluation/Design | Inspection | |
| Progressive A/E<br>18114 4-Mile Rd. - GR. | $26,000.00 | $11,200.00 | $37,200.00 |
| Rohdes Engineering<br>4801 Henry St. - Muskegon | $16,500.00 | $14,400.00 | $30,900.00 |
| Century A &E<br>277 Crahen Ave. - GR | $20,400.00 | $17,280.00 | $37,680.00 |

Commission Meeting Date: January 26, 2010

Date: January 19, 2010

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department

RE: Senior Nutrition Program, AgeWell Services of West Michigan (AWS)/City of Muskegon Agreement

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SUMMARY OF REQUEST: The City of Muskegon has had an Agreement with AgeWell Services of West Michigan (AWS), formerly Nutritional Services for Older Americans, Inc. (NSOA). They are requesting that this Agreement be renewed through for another year (through September 30, 2010). AWS will pay the City $200.00 a month for expenses associated with the McGraft Park Community Building, where they operate as a location for senior meals and support services for seniors in the area. The City will provide financial support in the amount of $8,316.00 for staff time for recreational programs provided at McGraft Park and their other locations.

FINANCIAL IMPACT: The City will receive $200.00 a month in rent from AWS and will provide $8,316.00 for staff time for programs provided at McGraft Park and other locations within the City of Muskegon for seniors.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Agreement between AWS and the City and authorize the Mayor to sign the Agreement.

C.B.C.
Planning

AgeWell SERVICES
meals
motion
morale

November 24, 2009

RECEIVED

DEC 18 2009

CITY OF MUSKEGON
PLANNING DEPARTMENT

Leisure Services
City of Muskegon
933 Terrace
Muskegon, MI 49440

Thank you to the City Commission and to the City of Muskegon and the Leisure Department for their support for the senior meals program and recreational opportunities for older adults within the City of Muskegon. Working together and pooling resources is the only opportunity that we have to continue needed services for the fastest growing segment of our population – the over 60 years of age group. Our goals are simple to keep older adults healthy, engaged in their communities, living in their homes safe and independent for as long as possible. Your partnership makes an impact on Quality of Life! Thank You.

Our programs for seniors in the City of Muskegon continue to be strong. Our focus remains at the McGraft Park Community Building for the City of Muskegon but we operate many programs at other city locations as well. Seniors in the community are looking to us as their source for health and wellness. Our emphasis is on Nutrition, Enrichment and Wellness. We feel that offering a variety of programs will keep them active and healthy and involved in the community they live in. With the opening of Tanglewood Park, many of the wellness programs did shift to that location. None of those numbers or services is in those reports. The membership of Tanglewood Park Wellness programs does have a strong contingency of City of Muskegon attendees but none of the funds from this support are used for Tanglewood Park.

In addition to McGraft Park we provide programs in the city at Jefferson Towers, Nelson Place, M-Tec and Bayview Towers. This past year we tried Senior Health & Fitness Day at Tanglewood Park and it wasn't the same. Next year it will be back at McGraft Park where older adults can enjoy the outdoors, the park and the facility at this event that brings over 300 seniors and agencies together.

We continue to provide home delivered meals to the seniors throughout the City of Muskegon using the centers as satellite operations to coordinate the service and the drivers and make sure that the seniors that are homebound have the meals, a visit by our drivers and visits by our assessment staff to connect them to any other services they may need. As

I am sure you have seen this program like many in the state have taken severe cuts in state funding. We currently do have a waiting list for meal deliveries. We did close the M-TEC location in the City of Muskegon. The few attendees are now going to Jefferson Towers.

Provided is a listing of the variety of programs we offer and some statistics. **Your support of our program keeps it going in the City of Muskegon.** We are only able to provide this service in the City of Muskegon with your financial support. Without it, we could not provide the health and wellness programs that are keeping seniors more active.

We are hoping you can maintain the rent at McGraft Park at the $200 as we have been paying and that you continue the staffing support at $8615 for the year for the continuation of needed additional programming for older adults. I know your funds are also limited and we appreciate your flexibility in the hours we use the facility. I know this is a community center and a source of rental revenue and that comes first. So allowing us to use it occasionally in the evenings or later afternoon when available is very helpful to us when available.

Thank you for the opportunity to partner with you!

Should you have any questions, please contact me.

Sincerely,

Sharon TerHaar
Director

CITY OF MUSKEGON SENIOR MEAL SITES OPERATED BY AGEWELL SERVICES

CENTERS have 1 Staff Person. They manage all operations around lunch service, distribution of home delivered meals in their building or neighborhood. Staff is required to arrange for and/or provide supportive services with our central focus being McGraft Park.

This table shows the Site meals and the home delivered meals that are served in the building or surrounding neighborhoods.

As our funding is for meal service only, we use the funds for 1 hour per day at McGraft Park and 1.25 hrs per week at the 4 other locations for activities. We match that with monies from fundraising.

| MEAL SITES | MCGRAFT PARK | | BAYVIEW TOWERS | | M-TEC CENTER | | NELSON PLACE | | JEFFERSON TOWERS | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Site Meals | Home Delivered | Site Meals | Home Delivered | Site Meals | Home Delivered | Site Meals | Home Delivered | Site Meals | Home Delivered |
| TOTAL MEALS * | 6833 | 12,584 | 7832 | 3217 | 594 | 2139 | 7669 | 1635 | 6048 | 3209 |
| Individual Seniors Served Meals age 60+ | 128 | 97 | 45 | 5 | 14 | 19 | 41 | 5 | 50 | 31 |
| Low Income Seniors incomes are self declared as at poverty level | 21 | 41 | 32 | 1 | 13 | 17 | 19 | 3 | 27 | 13 |
| Minorities of Seniors | 4 | 35 | 20 | 3 | 1 | 12 | 2 | 4 | 5 | 19 |
| Nutrition Risk Seniors Screening done annually | 14 | 45 | 24 | 3 | 2 | 11 | 10 | 1 | 19 | 12 |
| Seniors Living Alone | 118 | 65 | 38 | 3 | 11 | 8 | 29 | 4 | 38 | 31 |
| Amount seniors donate/meal<br>■ According to this, many are low income that do not report as such | $ 1.86 | $ .58 | $ .25 | $ .22 | $1.67 | $ .50 | $1.23 | $ .22 | $1.27 | $ .24 |

SUPPORTIVE SERVICES PROVIDED AT CENTERS

Many of the programs included on the listing are on-going daily programs and we do not track unduplicated or numbers attending those. Estimates are made based on their 'regular' daily attendance. Our site staff fills out a monthly report listing average number in attendance at any event. Some events that require registration for, we do track more. Most of the programs are FREE, some have a FEE to take the class and some we ask for a donation (like we do with meals). Many classes required us hiring teachers or providing certifications to our staff to be qualified to teach.

The following is the information provides a bit more detail on # attending various events.

AVERAGE DAILY ATTENDANCE AT EACH LOCATION for lunch and activities:

| | |
|---|---|
| McGraft Park | 26 |
| Bayview Towers | 32 |
| M-TEC | 4 |
| Nelson Place | 31 |
| Jefferson Towers | 25 |

| NUTRITION | NUMBER ATTENDING | NOTES |
|---|---|---|
| Nutrition Education Programs – REQUIRED per our meal contract | 100 monthly+ | Each location provides a program just prior to lunch and provided at least monthly.<br>(deals with health, nutrition, consumerism, chronic disease management) |
| SOCIAL ACTIVITIES | | |
| BINGO | Held 2x week at each location | |
| Parties | 200+ monthly | Each location does a special party once a month which requires extra planning, decorating, and programming. Attendance typically almost doubles that day at each location. |
| Picnics | 60 (May, June, July, Aug, Sept months only)<br>60 ---------- | McGraft Park does a picnic when shuffleboard needs to use facility. They usually go to Heritage Landing or Pere Marquette Park.<br>Other locations did 1 picnic each this summer |
| Card Games, Puzzles | Daily and/or weekly 200+ | Cribbage, Pinochle, Euchre, Bridge |
| Coffee Hour | 300+ monthly | Coffee and conversation late mornings before lunch time |

| ENRICHMENT PROGRAMS | Number Attending | NOTES |
|---|---|---|
| Music Activities | 7-20 people at a time participate weekly | Sing a longs |
| Crafts | 20 people weekly | Handi-work projects such as needlework, knitting, sewing, quiliting etc.<br>Many items made are donated to sell at a craft fair |
| MOVIES | 100 Weekly | Typically the classics and oldies! |
| SUMMER CONCERTS & PICNICS | 200 over summer | Offered picnic lunches and encouraged seniors to come and listen to music in the park and bring families and friends |
| BOOK CLUBS | 1 x Week # varies | Discussion on specific books or a group discussion on books they are reading |
| HEALTH & SPORTS PROGRAMS | | |
| Walking/Hiking | 15 people for 16 weeks | Walked Pere Marquette, McGraft Park, Heritage Landing and the Bike Paths |
| Shuffleboard | 10 people during summer | Casual, non competitive play. |
| Tennis | 16 people for 2 clinics | Provided beginning and advanced beginner lessons at McGraft Park<br>Then seniors came on their own to play after the clinics |
| Frisbee Golf | 20 people for 2 clinics | Provided instructions at McGraft Park.<br>Seniors came on their own to play after the clinics |
| Cross Country Skiing | 11 people for 2 clinics/outings | Provided instruction at McGraft Park |
| WELLNESS PROGRAMS | Numbers Attending | NOTES |
| Foot Care | 1x weekly at McGraft<br>Few times a year at other spots 6 per week | Provided by a volunteer who does not charge for this service |
| Chronic Disease Management Class | 30 People attended each session<br>Free to participants | We have a master trainer to teach this class, people with one of the major chronic diseases learn how to understand, cope, and manage the disease and its complications.<br>12 week class – 1 session at McGraft Park and 1 session at Nelson Place |
| Exercise Classes<br>Sit n Stretch, Basic Strength Building, Slow Movement Classes | 4 times through the year<br>Attendance 8-10 at each<br>Free to participants | Coordinator or volunteer provides instructions and some done by video assistance |
| Matter of Balance Fall Prevention | 16 people attended<br>Free to participants | We have a master trainer to teach this class which helps people learn how to prevent falls, safety checks at their homes, exercises for flexibility, etc. 8 week class and 1 session at McGraft Park |

## FUNDING FOR OUR SERVICES

Funding for the Congregate Centers and home delivered meals comes from the ***OLDER AMERICANS ACT.*** This money is federal and state funds awarded in nutrition grants. AgeWell Services is the contractor for the grant in the Muskegon, Ottawa and Oceana County area. Senior Resources, an area agency on aging, monitors the funding for our area. They award the funds and make sure the services meet all state and federal compliances.

In addition to the grant funds, we have ***program income.*** Program Income would be client donations for the meals or programs or client fees for the programs and or services.

***Fundraising and community support*** is a part of our operations to help maintain services and sometimes for special projects.

***Other grants*** and funding is also used such as with the Chronic Disease Management Funding, the Matter of Balance funding. This was a grant to provide for a staff person to become a master trainer and to offer the program free of charge to low income adults.

***Local resources are the balance.*** This would be specific funding for specific areas such as the **City of Muskegon Leisure Services** funding, in-kind donations for goods and services. Not all areas have some sort of matching funds and often we are not able to provide any programming in the locations other than nutrition education without additional resources.

AGREEMENT BETWEEN

AgeWell Services of West Michigan (AWS)
AND
The City of Muskegon
FOR THE MCGRAFT PARK COMMUNITY BUILDING
and Senior Citizen Programs

The purpose of the agreement is to establish the working arrangements for the occupancy of the City owned McGraft Park Community Building by the Senior Nutrition Program operated by AgeWell Services of West Michigan (AWS). The specifics of this agreement shall be as follows:

1. The City of Muskegon agrees to allow use of the McGraft Park Community Building to AWS to operate as a location for senior meals and support services for seniors in the area.

2. AWS will pay to the City $200.00 per month as a fee for expenses of rent and utilities including garbage service.

3. A telephone will be provided at the expense of AWS.

4. The City will provide a locked office for the program. A locked cupboard for storage in the kitchen will also be provided.

5. AWS will provide all materials for the program meal. AWS has full and complete responsibility for the operation of the program.

6. AWS agrees to work to promote recreational opportunities for seniors in the City of Muskegon.

7. AWS agrees to try to secure grants if available towards facility improvements or equipment for the operation of the program.

8. The building will be available to AWS from Monday through Friday during business hours – typically 9 - 3. Exceptions are voting days and the third Wednesday of the month "Shuffleboard Potlucks" during the summer. AWS may use the building for an evening event when approved by the City.

9. The care and maintenance of the facility is the City's responsibility with AWS responsible for routine daily clean-up; which is wiping tables, counters, sinks, and spills, and disposing of food and supply waste; leaving kitchen and dining area ready for use by any other tenants.

10. AWS provides liability insurance and its own health department licensing for its centers. Written evidence is available upon request.

11. The City agrees to financial support in the amount of $ 8316.00 for staff time for programs provided at McGraft Park and other locations within the city of Muskegon for seniors. These activities are wellness programs including exercise and health, chronic disease management, educational, social and a diversity of enrichment programs at a variety of locations.

12. Either party with sixty- (60) day notice may terminate this agreement with just cause.

The inclusive dates of this agreement are October 1, 2009 through September 30, 2010.

FOR: City of Muskegon

933 Terrace Street
Muskegon, MI 49440

Steve Warmington
Mayor of Muskegon

Date

FOR: AgeWell Services
Tanglewood Park
560 Seminole Road
Muskegon, MI 49444

Janet E. Hansen
Chairperson of the Board

Date

Date: January 26, 2010

To: Honorable Mayor and City Commissioners

From: Engineering

RE: City – MDOT Agreement for Engineering modification/upgrade traffic signals along Laketon Ave.

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## SUMMARY OF REQUEST:

To approve the attached contract with MDOT to perform the preliminary engineering to upgrade traffic signals on Laketon @ Hoyt, @ Getty & @ Roberts and to approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

## FINANCIAL IMPACT:

MDOT's participation in the design phase is limited to the federal funds of $19,200.

## BUDGET ACTION REQUIRED:

None at this time.

## STAFF RECOMMENDATION:

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

## COMMITTEE RECOMMENDATION:

RESOLUTION_____

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE PERFORMANCE OF PRELIMINARY ENGINEERING ACTIVITIES FOR THE INTERSECTIONS OF LAKEON & HOYT; LAKETON & GETTY; LAKETON & ROBERTS TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN BECKER TO EXECUTE SAID CONTRACT

Moved by_____and supported by

Commissioner_____that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **10-5009** between the Michigan Department of Transportation and the City of Muskegon for the **preliminary engineering activities to upgrade three traffic signals along Laketon @ Hoyt, Getty & Roberts** within the City is in the best interests of the City of Muskegon.

**RESOLVED**, that entry by the City into Contract Agreement Number **10-5009** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this_____day of_____, 2010.

BY

_____

Stephen J. Warmington, Mayor

ATTEST

_____

Ann Becker, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on _____**, 2010**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By_____

Ann Becker, City Clerk

STP
PRELIMINARY ENGINEERING
MODIFIED PART II

DIR

| | |
|---|---|
| Control Section | STH 61609 |
| Job Number | 108641 |
| Project | STP 1061(309) |
| Federal Item No. | RR 7077 |
| CFDA No. | 20.205 (Highway Research Planning & Construction) |
| Contract No. | 10 5009 |

PART I

THIS CONTRACT, consisting of PART I and PART II (Modified Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the performance by the REQUESTING PARTY of preliminary engineering, consisting of the preparation of reports and studies, as well as the surveys and design, necessary for the construction of the following improvements in the City of Muskegon, Michigan, which preliminary engineering is hereinafter referred to as the "PROJECT":

The performance of preliminary engineering activities for traffic signal upgrading work at the intersection of Laketon Avenue and Hoyt Street, the intersection of Laketon Avenue and Getty Street, and at the intersection of Laketon Avenue and Roberts Street; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

2. The term "PROJECT COST", as herein used, is hereby defined as all the costs necessary for the performance of the PROJECT work, including the costs of design, design surveys, final construction plans and specifications, and any costs incurred by the DEPARTMENT as a result of this contract.

3. The REQUESTING PARTY will perform or cause to be performed all the PROJECT work. A separate work authorization will be issued to the REQUESTING PARTY by the DEPARTMENT for the commencement of the PROJECT work. The method of performing the work will be indicated on the work authorization.

4. The PROJECT COST shall be met in part by contributions by the Federal Government. Federal Surface Transportation Funds shall be applied to the eligible items of the PROJECT COST at the established Federal participation ratio equal to 80 percent. The balance of the PROJECT COST, after deduction of Federal Funds, shall be paid by the REQUESTING PARTY. The PROJECT COST and the cost participation are estimated to be as follows:

| ESTIMATED COST | FEDERAL AID | REQUESTING PARTY'S SHARE |
|---|---|---|
| $24,000 | $19,200 | $4,800 |

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

5. The construction of the improvements for which the PROJECT work is being performed and the construction engineering work related thereto will be covered by a separate contract.

6. A working capital deposit is not required for the PROJECT.

7. The contracting parties do hereby agree to be bound by all of the provisions and conditions set forth in PART II hereof which are applicable to the PROJECT.

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

8. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the state and/or the FHWA.

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

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

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

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

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

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

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

CITY OF MUSKEGON

By_____
Title:

By_____
Title:

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By_____
Department Director MDOT

WCS RECEIVED 1-6-2010

FORM APPROVED
1/13/10
ASSISTANT ATTORNEY GENERAL

# PART II
# MODIFIED

## STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV SPECIAL PROGRAM AND PROJECT CONDITIONS

## SECTION I

## COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. All work shall be performed in accordance with the requirements and procedures of the DEPARTMENT.

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

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

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

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

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

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

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

## SECTION II

## PROJECT ADMINISTRATION AND SUPERVISION

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

B. On those projects funded with Federal monies, the DEPARTMENT shall, as may be required, secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

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

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

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

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

D. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

E. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

F. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

G. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

H. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 201, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

I. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.'

J. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

K. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that canceled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the canceled portions of the PROJECT will be promptly refunded.

L. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FAPG Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. General Conditions:

1. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

2. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

## SECTION IV

## SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way acquisition.

C. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

D. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

## APPENDIX A
## PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.

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

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

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

(Rev. 03/92)

## APPENDIX B

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

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX C

## TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

**AGENDA ITEM NO. _____**

**CITY COMMISSION MEETING _____**

**TO**: Honorable Mayor and City Commissioners

**FROM**: Bryon L. Mazade, City Manager

**DATE**: January 15, 2010

**RE**: Roosevelt Park Water & Sewer Systems Operation Agreement

**SUMMARY OF REQUEST**:
To approve an agreement with the City of Roosevelt Park for the City of Muskegon to provide certain administrative functions and maintenance of the Roosevelt Park water and sewer systems.

**FINANCIAL IMPACT**:
The City will be paid for its costs.

**BUDGET ACTION REQUIRED**:
None.

**STAFF RECOMMENDATION**:
To approve the agreement and authorize the Mayor and Clerk to execute it.

**COMMITTEE RECOMMENDATION**:
None.

# OPERATION AND MAINTENANCE AGREEMENT

This Agreement is effective on _____, 2010, between the **City of Muskegon,** 933 Terrace Street, Muskegon, Michigan 49443("Muskegon"), and the **City of Roosevelt Park,** 900 Oak Ridge Road, Roosevelt Park, Michigan 49441("Roosevelt Park").

## Introduction

A. Roosevelt Park and Muskegon desire to enter into a contract for Muskegon to provide operation and maintenance functions of Roosevelt Park's Water and Sewer Systems.

**THE PARTIES AGREE AS FOLLOWS:**

1. **Operations Function.** Muskegon will act as the Operator in Charge of the Roosevelt Park water system. As such, Muskegon will ensure that the appropriate testing of the water system is accomplished and applicable reports are filed with the MDEQ.

2. **Maintenance Functions.** Muskegon agrees to provide emergency on-call repairs, and routine maintenance for Roosevelt Park's water and sewer systems, as requested.

3. **Rate**. Muskegon shall charge Roosevelt Park on a time-and-material basis, as follows:

a) **Material.** Muskegon shall charge Roosevelt Park for all materials at cost plus the City Commission standard overhead rate, which is presently fifteen percent (15%). Muskegon shall provide itemized bills for materials.

b) **Sub-contractors.** Muskegon shall charge Roosevelt Park for all sub-contractors at cost plus the City Commission determined standard overhead rate, which is presently fifteen percent (15%). Muskegon shall provide itemized bills for sub-contractors.

c) **Manpower Costs.** Muskegon shall charge Roosevelt Park for all manpower time attributable to the Water and Sewer Systems, including travel time and any minimum time that Muskegon is obligated to pay an employee. Muskegon shall charge the hourly rate Muskegon pays the employee performing the work, plus a calculated percentage to cover fringe benefits and other non-direct costs. The calculated hourly rate shall be determined annually based on the current City of Muskegon Water and Sewer Utility Maintenance Budgets.

d) **Equipment.** The charge for any Muskegon equipment shall be at the rate that the State of Michigan sets for equipment rental. If the State does not have such a charge, the rate shall be that set by Muskegon.

e) **Rate Changes**. As the hourly rates for employees and cost of fringe benefits change, Muskegon shall immediately inform Roosevelt Park as to changes in hourly rates, fringe benefit costs, and overhead rate. Changes in the overhead rate will be applied prospectively, only, but the hourly rate and fringe benefit cost may be changed retroactively, but only if the settlement of a labor contract results in a change in the hourly rate of Muskegon employees.

4. **Payment.** Roosevelt Park shall pay Muskegon, as follows:

b) Muskegon shall send an invoice to Roosevelt Park for manpower, materials, sub-contractors, and equipment on a regular basis. In any event not later than the 30th day of the month following the close of the month in which such services were rendered. Roosevelt Park shall pay such charges within thirty (30) days.

6. **Term.** The term of the agreement shall be for one year from the effective date of the agreement.

5. **Miscellaneous.**

a. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.

b. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter. This Agreement supersedes and/or replaces any oral or written Agreement(s) relating to the subject matter entered into by the parties before the date of this Agreement.

c. **Additional Agreements.** Muskegon and Roosevelt Park agree to enter into any further agreements, contracts or consents necessary to fully effectuate the terms of this Agreement.

d. **Termination.** Either party may terminate this contract on sixty (60) days notice.

e. **Assignment**. This contract may not be assigned to another entity by either party.

The parties have executed this Agreement with the consent and approval of their governing bodies. It is effective on the effective date set forth above.

**City of Roosevelt Park**

Date:_____, 2009 By _____
Jeff Lenartowicz, Mayor

Date:_____, 2009 and _____
Tammera Harmsen, Clerk

**City of Muskegon**

Date:_____, 2009 By _____
Stephen J. Warmington, Mayor

Date: _____, 2009 and _____
Ann Marie Becker, Clerk

Date: **January 26, 2010**

To: **Mayor and City Commission**

From: **Public Works**

Re: **Marsh Field Management Agreement**

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SUMMARY OF REQUEST: Authorize the Mayor and City Clerk to execute the attached "Marsh Field Baseball Facility Management Agreement" with Lakeshore Baseball Club. Previously, the City Commission approved the concept of allowing the Lakeshore Baseball Club operate Marsh Field for future baseball recreational activities.

FINANCIAL IMPACT: Lakeshore Baseball Club will expand the operations of this facility and will invest in improvements to the facility.

BUDGET ACTION REQUIRED:
This contract will offer a substantial savings in maintenance costs and opportunities for capital improvements that the City cannot accomplish.

STAFF RECOMMENDATION:
Recommend approval.

COMMITTEE RECOMMENDATION:

# MARSH FIELD BASEBALL FACILITY MANAGEMENT AGREEMENT

This Agreement is made this ____ day of _____ 20__ by and between the City of Muskegon, a Michigan municipal corporation, 933 Terrace Street, Muskegon, Michigan 49443-0536 ("the City") and Lakeshore Baseball Club, LLC, a Michigan limited liability company, of Muskegon, Michigan("LBC").

## Background

WHEREAS, Marsh Field Baseball Facility (MFBF) is a baseball field located in Marsh Field Park within the park system of the City and is located at 1800 Peck Street, Muskegon, Michigan, at the intersection of Peck Street and Laketon Avenue;

WHEREAS, Marsh Field consists of a baseball facility, a playground, picnic equipment, and surrounding walking trails;

WHEREAS, the City owns the MFBF and LBC wishes to operate and maintain the MFBF for eight months of the year;

**In consideration of the mutual promises of the parties set forth in this Agreement and other valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:**

**Definitions. "**The Season" shall be defined as the period beginning on March 1st of any given year and ending on October 31st of the same year.

**Term.** This Agreement shall be for a period of three (3) years. At the end of each Season during the term of the agreement, the parties may agree to extend the life of the agreement by one year, thus creating a perpetual three-year contract. Both parties must agree in writing to the extension of the term of the contract. In the event that the results of operations for any year during the term are insufficient to allow LBC to fulfill its obligations hereunder, LBC shall be permitted to terminate this Agreement upon ninety (90) days advance written notice. In the event that LBC fails to provide the services in the best interests of the Marsh Field Facility, the shall be permitted to terminate this Agreement upon ninety (90) days advance written notice.

**Maintenance.** LBC shall operate and maintain the MFBF in an efficient and competent manner throughout the Season. During the off-Season period, from November 1 until March 1 of the following year, the LBC may use the MFBF only with prior approval and permission from the City, which approval and permission shall not be unreasonably withheld or delayed. During the Season, LBC shall have the exclusive right to control the use of and have sole responsibility for maintaining the schedule for use of the MFBF.

LBC shall be responsible for the following during the Season:

Repair or replace as needed all bases, home plate, pitching rubbers, chalk, diamond dry, stone dust, clay bricks, or any other baseball related items attributable to the playing surface.

Perform maintenance of the MFBF, including but not limited to, picking up trash and cleaning the restroom facilities.

The City shall provide the following maintenance equipment for LBC's use during the Season:

Electric cart
Field drag and float
Batter's box template
Line painter machine and chalker
Hand held blower
Weed whip
Push lawnmower

The City shall be responsible for the following year-round, including the Season:

Provide dumpster service, trash bags, paper products, and cleaning supplies for the cleaning of restrooms.

Maintain walking trail, playground equipment, and all trees.

Mow the grass, including the MFBF, at least once per week during the slow growing months, and twice per week during peak growing months of May, June, and July. If any additional mowing is needed during the Season, it shall be performed by the LBC.

**Concessions.** LBC shall control all concessions directly or through its designated vendor or licensee and receive any profits from these concessions. LBC or its designated vendor or licensee will be responsible for all sales tax reports and remittance. LBC shall be responsible for maintenance and cleaning of concessions areas.

**Improvements.** LBC shall upgrade the assets of the MFBF to make the facility more desirable for future tournaments and leagues, in a manner subject to review and approval of the City, which shall not be unreasonably withheld or delayed. All such improvements must comply with all current laws and ordinances, including but not limited to the Americans with Disabilities Act.

**ADA Compliance.** LBC shall insure that reasonable accommodations will be met as required by the Americans with Disabilities Act. To that end, the LBC shall unlock the elevator for use upon request and shall assist persons in wheelchairs with use of the entrance ramp.

**Entrance and Parking Fees.** LBC may charge a gate entrance fee or other use fee, for spectators attending events within the MFBF. All parking shall be free of charge to accommodate trail walkers and non-baseball related activities.

**Historic Character and Marsh Field Name.** LBC shall protect and promote the unique history, character and charm of the MFBF, including the "Marsh Field" name. The name of the facility shall not be changed, but LBC shall be permitted a license to use and promote the name in any of its advertising, promotions, fundraising and other activities as it may conduct from time to time at the MFBF.

**Electrical Utilities.** The City shall pay and LBC shall reimburse the City for the cost of electrical service for the MFBF facility during the Season.

**Water and Sewer.** LBC shall reimburse the City for the cost of water and sewer service for the restrooms and concession stand during the operational period covered by this contract. Irrigation water is separately metered and the City shall pay for all sprinkling/irrigation.

**Improvements.** During the term of this contract, LBC shall make the following improvements, subject to site and other environmental conditions:

Infield upgrades (Immediately upon approval of this contract)
Reseeding, fertilizing, weed control, as needed
Re-netting of backstop
Dugout upgrades
Field lighting upgrades and improvement
Grandstand and seating improvement
Scoreboard improvement
Landscaping improvements

LBC will retain possession of any "portable" improvements and the City shall retain possession of any "attached" improvements.

The City shall seek grants and donations to assist LBC in funding MFBF improvements and upgrades.

**Promotions, advertising, fund-raising.** LBC may operate and promote baseball leagues and tournaments and events to increase use of MFBF and provide activities for our residents and guests, for which it may charge a fee. LBC shall promote participation of local City of Muskegon youth in tournaments. The City shall assist LBC in recruiting City of Muskegon youth to participate in existing leagues or programs offered by or through baseball organizations using the MFBF. The City shall assist LBC in the promotion of baseball leagues and tournaments with the assistance of its Events Committee.

LBC may advertise and obtain sponsors for a fee. Non-permanent banners may be displayed inside the MFBF on the fences for the duration of the Season. The City must pre-approve the material, size and content of banners, which shall not be unreasonably withheld.

LBC may charge team fees, entry fees, and tournament fees to provide funds for MFBF operating expenses and to provide funds for future upgrades of the MFBF facility.

**Muskegon Public Schools.** LBC shall accommodate Muskegon Public Schools' schedule for games and practices including preparation of the field on game days. All scheduling and game cancellations shall be handled directly between the Muskegon Public School System and LBC. The City shall act as liaison between the LBC and the Muskegon Public School System to resolve any conflicts or disagreements that may arise. LBC and the City may require proof of insurance related to such use in accordance with historic practices, the parties recognizing and agreeing that LBC shall have no liability for any such uses.

**Programs.** LBC will continue to provide recreational baseball opportunities similar to those currently provided by the City of Muskegon Recreation Department, and to expand and promote additional opportunities whenever possible.

LBC will allow the opportunity of one all-star team from the East Little League and one all-star team from the West Little League to participate in tournaments free of entry fee. LBC will make such offer to each local Little League group far enough in advance that the league can put together a roster and respond in a timely manner.

LBC, either directly or through a third party, may at times conduct summer baseball/softball camps. LBC will waive registrations fees for City of Muskegon youth upon proof of residency. LBC shall coordinate with the City for the promotion of these events.

LBC will cooperate with the City for the scheduling of any special non-baseball event that may need to use the MFBF. The City shall pay all extraordinary expenses incurred for such non-baseball events and LBC shall have no liability with respect thereto.

**Use of Other City Facilities.** The City shall assist LBC whenever it wishes to use additional City of Muskegon softball facilities such as Beukema, Reese, and McCrea Fields. The use of these facilities will be subject to scheduling and availability. The modification of these additional facilities to accommodate little league play will be at the expense of LBC.

**Reports.** LBC shall provide an annual report of participation and demographics to the City. LBC shall provide an annual financial report showing revenues and expenses and the amounts invested in the facility to the City.

**Portable Restrooms.** LBC will provide additional portable restrooms if needed for special baseball events or tournaments. At least one ADA approved portable restroom is required.

**Notice of Schedule.** LBC will notify the City of any scheduled events as far in advance as possible so that the City can assist in answering questions and to assist in promotion both through its Events Committee and through its website.

**Insurance.** LBC shall obtain the following types of insurance with the minimum coverage amounts as follows:

> Comprehensive General Liability Insurance. LBC shall obtain a comprehensive liability policy acceptable to the City carrying limits of at least $1,000,000, single limit.

Automobile Liability. LBC shall obtain automobile liability insurance in an amount not less than minimum state requirements.

Workers Compensation insurance. LBC shall carry workers' compensation insurance in the amounts required by law for any of its employees.

The City shall be named as additional insured on the Comprehensive General Liability Insurance and Automobile Liability policies. Each policy shall carry the commitment by the company that no cancellation shall be effective against the City with less than thirty (30) days written notice to the City.

**Liens.** LBC shall be responsible for protecting the City from any and all liens, mortgages, and security interests or claims for any interest in any property owned by the City relating to LBC's use thereof..

This Agreement was entered into on the date set forth above.

**BY:**

**City of Muskegon**, a Michigan municipal corporation

By: _____
Stephen J. Warmington, Mayor

By: _____
Ann Marie Becker, MMC, Clerk

**AND:**

**Lakeshore Baseball Club,** a Michigan corporation

By: _____

Leonard Piasecki Its: President