CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 8, 2002

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **PRESENTATION:**
  - a. **Presentation to Fire Department by Verizon.**
- **CONSENT AGENDA:**
  - a. **Approval of Minutes.** CITY CLERK
  - b. **Sale of Non-Buildable Lot on Delaware Avenue.** PLANNING & ECONOMIC DEVELOPMENT
  - c. **Memorandum of Agreement with Muskegon County to License Cats and help enforce the Animal Control Ordinance of the City.** CITY MANAGER
  - d. **Transportation Improvements Program Submittal for: 2002-2004.**
  - e. **Purchase of 428 Marquette.**
  - f. **Approval of Proposal from Charles Eckenstahler for Consulting Services for the LDFA SmartZone.**
- **PUBLIC HEARINGS:**
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
  - a. **City Manager Employment (July 11, 2001).** CITY CLERK

- **NEW BUSINESS:**

  a. **Lead Based Paint Abatement at 1838 Jarman**

  b. **FIRST READING , Zoning Ordinance Amendment to allow specialized adult educational programs in the B-3, Central Business, District.**

  c. **Amendments to IFT "Contract for Tax Abatement".**

  d. **Extension of Construction Time Period – Purchase Agreement/Former Lakos Property (Muskegon Hospitality, Inc./City of Muskegon).**

  e. **Terrace Lots/Extension of Real Estate Purchase Agreement.** PLANNING & ECONOMIC DEVELOPMENT

  f. **Approval of Core Communities Funding (CCF) Program Agreement.** PLANING & ECONOMIC DEVELOPMENT

- **ANY OTHER BUSINESS:**

- **PUBLIC PARTICIPATION:**

- ***Reminder: Individuals who would like to address the City Commission shall do the following:***
- Be recognized by the Chair.
- Step forward to the microphone.
- State name and address.
- Limit of 3 minutes to address the Commission.
- (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

- **ADJOURNMENT:**

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

Date: **January 8, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Gail A. Kundinger, City Clerk**

RE: **Approval of Minutes**

SUMMARY OF REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, December 10, 2001; and Regular Commission Meeting that was held on Tuesday, December 11, 2001.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 8, 2002

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 5:30pm, Tuesday, January 8, 2002.

Former Mayor Nielsen handed the gavel to Mayor Warmington prior to start of meeting. Mayor Warmington opened the meeting by introducing Reverend John Grostic from Our Savior Lutheran, who offered the prayer, after which members of the City Commission and members of the public joined in reciting the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING

Present: Mayor Stephen Warmington, Vice-Mayor Karen Buie, Commissioners Stephen Gawron, William Larson, Robert Schweifler, Clara Shepherd, Lawrence Spataro; City Manager Bryon Mazade; City Attorney Thomas Johnson and City Clerk Gail Kundinger.

2002-02 PRESENTATION:

a. Presentation to Fire Department by Verizon.

Verizon representative John Van Wyke presented the Fire Department with teddy bears to be given to children that become victims of fires.

b. Presentation to Verizon.

Mayor Stephen Warmington presented an Appreciation Award to Verizon represented by John Van Wyke for their involvement with the community.

2002-03 CONSENT AGENDA:

a. Approval of Minutes. CITY CLERK

SUMMARY REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, December 10, 2001; and Regular Commission meeting that was held on Tuesday, December 11, 2001.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

b. Sale of Non-Buildable Lot on Delaware Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The property at 297 Delaware Avenue (parcel # 24-205-235-0013-00) was originally owned by the Goodwill Industries in 1989 but was tax reverted to the State of Michigan because the property was overlooked by Goodwill Industries. Under the provisions of Act 451, P.A. 1994, the City of Muskegon acquired some tax reverted properties from the State of Michigan, parcel # 24-205-235-0013-00 being one, and received its title from the State on April, 1995. Surrounded by existing parking lots of Goodwill Industries, said parcel is landlocked and gives the City of Muskegon no potential use.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the sale of the vacant lot to Goodwill Industries for $100.

c. <u>Memorandum of Agreement with Muskegon County to License Cats and help enforce the Animal Control Ordinance of the City.</u> CITY MANAGER

SUMMARY OF REQUEST: Approve the memorandum of agreement with Muskegon County so the proposal may be presented to the County Board of Commissioners at their February 5th "Work Session"

FINANCIAL IMPACT: The city will be paying the difference between a current half-time animal control officer's position and a full-time position to assist with the enforcement of the new Animal control Ordinance ($24,800). We will also pay the one-time licensing start-up fee estimated at about $1,000. The agreement is structured so licensing fees offset the City's cost for this assistance.

BUDGET ACTION REQUIRED: A 2002 Budget amendment will be necessary to cover these costs.

STAFF RECOMMENDATION: Adopt the resolution and MOA.

d. <u>Transportation Improvements Program Submittal for: 2002-2004.</u> ENGINEERING

SUMMARY OF REQUEST: Authorize staff to submit a request to WMSRDC in which to remove Black Creek project from the 2004 TIP and replace it with Clay Ave. from Spring to Terrace. This request is due to the fact that in an effort to curb the pavement deterioration, Black Creek was place on the 2002 CIP for improvements rather than wait until 2004 for the grant money.

FINANCIAL IMPACT: None at this time, however, a local match equal to that that was approved for Black Creek will be required.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the project submittal.

e. <u>Purchase of 428 Marquette.</u> COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the purchase of the property located at 428 Marquette (City of Muskegon revised Plat of 1903 E 12 feet lot 11 and W 31.5 feet of lot 12 block 11) 78' x 132' from Bankhead Education consulting for the appraised price of $6,200.00.

After approval of the purchase by the Commission the CNS department will demolition the existing structure combine the lots and build a ranch style home in conjunction with the City's Jackson Hill Infill program a.k.a. Operation J-Hill.

FINANCIAL IMPACT: Funding for purchase, demolition and construction will come from the City's 2000 and 2001 HOME funding.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

f. <u>Approval of Proposal from Charles Eckenstahler for Consulting Services for the LDFA SmartZone.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the Proposal/Contract between Charles R. Eckenstahler and the City of Muskegon for services related to the preparation of the Smartzone LDFA Plan.

FINANCIAL IMPACT: The amount of the contract is $5,500. The City's General Fund will pay this amount and will be reimbursed through LDFA funds in the future.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Proposal/Contract and authorize the Mayor to sign the Proposal/Contract.

Motion by Commissioner Spataro, second by Commissioner Larson to approve the Consent Agenda.

ROLL VOTE: Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington, Buie.

Nays: None

MOTION PASSED

2002-04 UNFINISHED BUSINESS:

a. City Manager Employment (July 11, 2001). CITY CLERK

Motion by Commissioner Schweifler, second by Commissioner Spataro to refrain from further consideration of the question and previous motions to terminate the City Manager, and take no further action in the matter.

ROLL VOTE: Ayes: Larson, Schweifler, Shepherd, Spataro, Warmington, Buie,Gawron.

Nays: None.

MOTION PASSED

2002-05 NEW BUSINESS:

a. **Lead Based Paint Abatement at 1838 Jarman.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the bid with Success Builders for the lead base paint abatement of the city-owned home at 1838 Jarman for $22,330.

After the lead base paint abatement is complete the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2000 HOME budget for lead based paint abatement.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Success Builders of Muskegon.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the bid with Success Builders for the lead base paint abatement of the city-owned home at 1838 Jarman for $22,330.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Wamington, Buie, Gawron, Larson.

Nays: None

MOTION PASSED

b. **FIRST READING , Zoning Ordinance Amendment to allow specialized adult educational programs in the B-3, Central Business, District.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1201 (Special Land Uses Permitted) of Article XII (B-3, Central Business) of the City's Zoning Ordinance to allow specialized adult educational programs, under certain conditions.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to change the proposed language in the article and section described above.

COMMITTEE RECOMMENDATION: The Zoning Board of Appeals classified this use as belonging in the B-3 district, under special use permit, on 11/13/01. The vote was unanimous with J. Aslakson and S. Schiller absent. The Planning Commission recommended denial of the current request on 12/13/01, because they did not feel that the use fits well within the downtown area. The vote to deny was unanimous, with D. Coleman absent.

Motion by Commissioner Larson, second by Commissioner Schweifler to approve the amendment of the Zoning Ordinance.

ROLL VOTE: Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd.

Nays: None.

MOTION PASSED

c. <u>Amendments to IFT "Contract for Tax Abatement".</u> PLANNING & ECONOMIC DEVELOPMENT

Item withdrawn from Agenda per request of Staff.

d. <u>Extension of Construction Time Period – Purchase Agreement/Former Lakos Property (Muskegon Hospitality, Inc./City of Muskegon).</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the written request from Holiday Inn Muskegon Harbor/Muskegon Hospitality Inc. to extend the construction time period designated in the Purchase Agreement between Muskegon Hospitality, Inc. and the City of Muskegon for the former Lakos property, with conditions. Although the extension request is for 24 months, staff recommends that the request be granted for 12-months, in accordance with Section (9) of the Purchase Agreement (through September 2002).

FINANCIAL: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request from Muskegon Hospitality Inc. for an extension for completion of construction, for a period of 12 months, provided that the following conditions be met: 1) a timeline for building construction and future use be provided to the City by February 1, 2002, 2) the property be filled with 3" of topsoil and the property be seeded by May 31, 2002, 3) the existing fence be moved from it's current location to the rear of the property so that it screens the rear delivery and dumpster area by May 31, 2002. Further, the buyer must sign an addendum to the Land Contract and Purchase Agreement agreeing to these terms.

Motion by Commissioner Schweifler, second by Commissioner Spataro to table until next meeting.

ROLL CALL: Ayes: Shepherd, Spataro, Warmington, Buie, Gawron, Larson, Schweifler

Nays: None.

MOTION PASSES

e. <u>Terrace Lots/Extension of Real Estate Purchase Agreement.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The Westwood Group L.L.C. and the City of Muskegon entered into a "Real Estate Purchase Agreement" for the Terrace Lots on October 12, 2000. The Westwood Group has requested that the Agreement be extended. The Commission is requested to approve the attached "First Amendment to Real Estate Sale Contract" between The Westwood Group, L.L.C. and the City of Muskegon.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the "First Amendment to Real Estate Sale Contract" and authorize the Mayor and Clerk to sign.

Motion by Commissioner Spataro, second by Commissioner Buie to grant the extension and add the date change for the closing on parcel #1as February 28, 2002.

ROLL CALL: Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro.

Nays: None.

MOTION PASSES.

f. <u>Approval of Core Communities Funding (CCF) Program Agreement.</u> PLANING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City Commission approved the CCF loan, in the amount of $1 Million in 2001. These funds will be used on the Smartzone property of the seawall and boardwalk. In order to move forward on the expenditure of these funds, it is necessary to approve the agreement between the Michigan Economic Development Corporation and the City of Muskegon.

FINANCIAL IMPACT: The City will receive $1 Million in funds for the Smartzone site.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the "Core Communities Funding (CCF) Program CCF Agreement" and authorize the Mayor to sign.

Motion by Commissioner Schweifler, second by Commissioner Gawron to approve the "Core Communities Funding (CCF) Program CCF Agreement" and authorize the Mayor to sign.

ROLL CALL: Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington.

Nays: None.

MOTION PASSES

2002-06 ANY OTHER BUSINESS: Commissioner Spataro would like the City Commission to meet with the County Board to set goals for working together.

2002-07 PUBLIC PARTICIPATION: Citizens from the audience made various comments.

2002-08 ADJOURNMENT: The Regular Commission Meeting for the City of Muskegon was adjourned at 6:43 p.m.

Respectfully submitted,

Gail A. Kundinger

Gail A. Kundinger, CMC/AAE
City Clerk

Commission Meeting Date: January 8, 2002

Date:	**January 2, 2002**
To:	**Honorable Mayor and City Commissioners**
From:	**Planning & Economic Development** CBC
RE:	**Sale of Non-Buildable Lot**

SUMMARY OF REQUEST:

The property at 297 Delaware Avenue (parcel # 24-205-235-0013-00) was originally owned by the Goodwill Industries in 1989 but was tax reverted to the State of Michigan because the property was overlooked by Goodwill Industries. Under the provisions of Act 451, P.A. 1994, the City of Muskegon acquired some tax reverted properties from the State of Michigan, parcel # 24-205-235-0013-00 being one, and received its title from the State on April, 1995. Surrounded by existing parking lots of Goodwill Industries, said parcel is landlocked and gives the City of Muskegon no potential use.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the sale of the vacant lot to Goodwill Industries for $100.

COMMITTEE RECOMMENDATION:

None

Resolution No. 2002-03(b)

MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE SALE OF A VACANT CITY-OWNED LOT ON 297 DELAWARE AVENUE TO GOODWILL INDUSTRIES.

WHEREAS, the property is described as parcel number 24-205-235-0013-00 and further described as W ½ Lot 13 Block 235, Revised Plat of 1903, City of Muskegon;

WHEREAS, Goodwill Industries originally owned the property in 1989 but said parcel was reverted to the State of Michigan and then to the City of Muskegon in April, 1995;

WHEREAS, the subject parcel is landlocked by properties owned by Goodwill Industries, which are currently being used for parking;

WHEREAS, the sale would relieve the City of further maintenance costs;

WHEREAS, the sale is consistent with City policy regarding the disposition of a non-buildable lot;

NOW THEREFORE BE IT RESOLVED, that parcel number 24-205-235-0013-00, located on 297 Delaware Avenue be sold to Goodwill Industries for $100.

Adopted this 8th day of January, 2002

Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington, Buie

Nays: None

Absent None

By: [signature]
Steve J. Warmington, Mayor

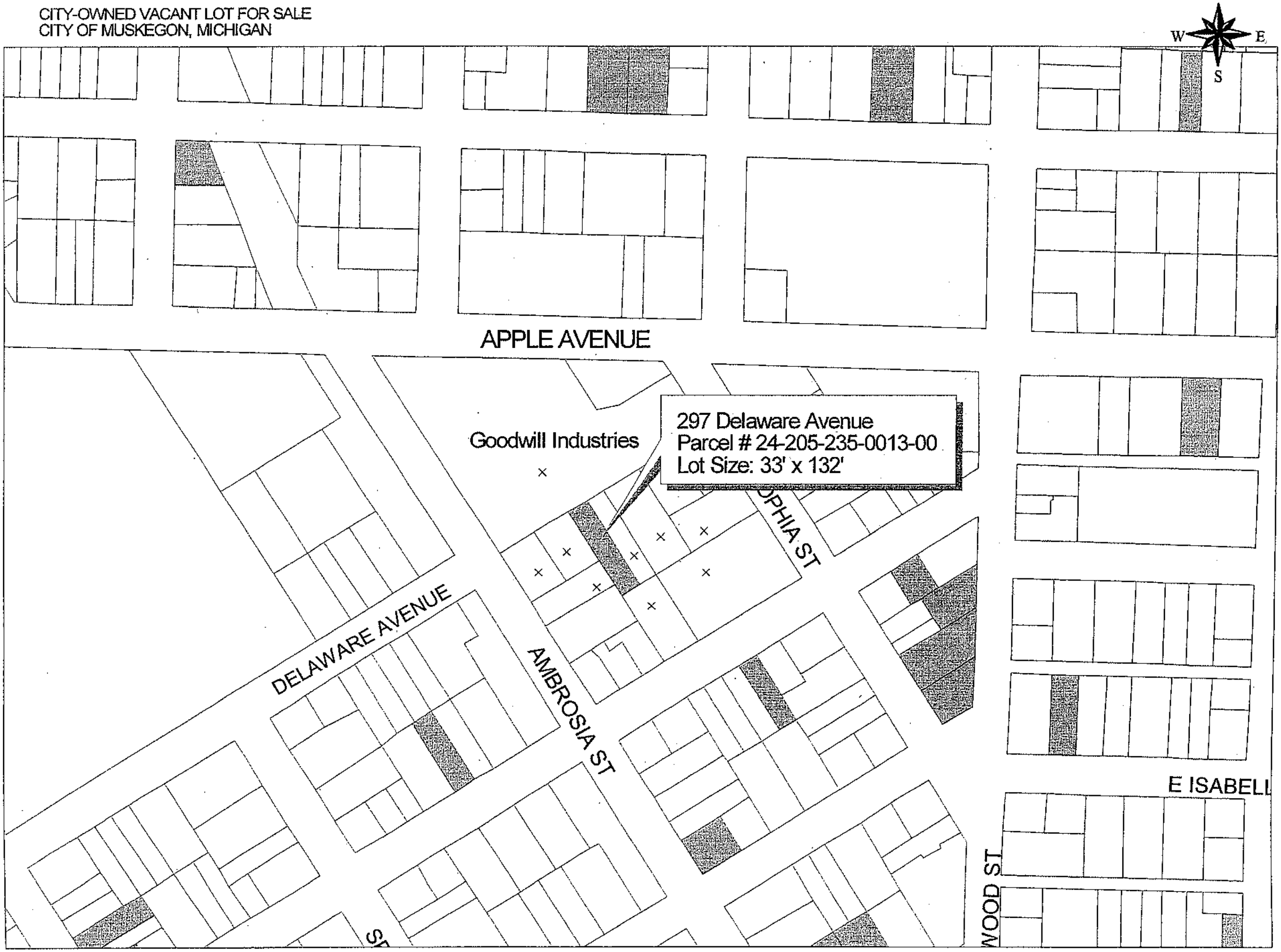
Attest: Gail Kundinger
Gail Kundinger, Clerk

CERTIFICATION

I hearby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on January 8, 2002.

By: Gail Kundinger
Gail Kundinger, Clerk

CITY-OWNED VACANT LOT FOR SALE
CITY OF MUSKEGON, MICHIGAN



Note: Parcels marked with an "X" are owned by Goodwill Industries.

QUIT-CLAIM DEED

2002-03(b)

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF MUSKEGON, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440,

QUIT CLAIMS to GOODWILL INDUSTRIES OF WEST MICHIGAN, INC., a Michigan corporation, of 271 E. Apple Avenue, Muskegon, MI 49442,

the following described premises situated in the City of Muskegon, County of Muskegon, State of Michigan, to wit:

The West 1/2 of Lot 13 of Block 235 of the Revised Plat (of 1903) of the City of Muskegon;
[Parcel No. 24-205-235-0013-00; 297 Delaware Avenue]

for the sum of One Hundred ($100) Dollars.

This deed is exempt from real estate transfer tax pursuant to the provisions of MCLA 207.505(h)(i) and MCLA 207.526 Sec. 6(h)(i).

Dated this 10th day of January, 2002.

Signed in the presence of:

Linda Potter
Linda Potter

Irene Dempsey
Irene Dempsey

CITY OF MUSKEGON

By ____
Stephen J. Warmington, Its Mayor

Gail A. Kundinger
Gail A. Kundinger, Its Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 10th day of January, 2002, STEPHEN J. WARMINGTON and GAIL A. KUNDINGER, Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

PREPARED BY:
G. Thomas Johnson, Parmenter O'Toole
175 W. Apple Ave., Muskegon, MI 49443-0786
Telephone: 231.722.1621

Linda S. Potter
Linda S. Potter
Notary Public, Muskegon County, Michigan
My commission expires: 9-25-02

WHEN RECORDED RETURN TO: Grantee

SEND SUBSEQUENT TAX BILLS TO: Grantee

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AGENDA Item No. _______

MUSKEGON CITY COMMISSION MEETING – January 8, 2002

To:	Honorable Mayor and City Commissioners
From:	City Manager's Office BM
Date:	December 26, 2001
Subject:	Memorandum of Agreement with Muskegon County to License Cats and help enforce the Animal Control Ordinance of the City.

SUMMARY OF REQUEST

Approve the attached memorandum of agreement with Muskegon County so the proposal may be presented to the County Board of Commissioners at their February 5th "Work Session."

FINANCIAL IMPACT

The City will be paying the difference between a current half-time animal control officer's position and a full-time position to assist with the enforcement of the new Animal Control Ordinance ($24,800). We will also pay the one-time licensing start-up fee estimated at about $1,000. The agreement is structured so licensing fees offset the City's cost for this assistance.

BUDGET ACTION REQUIRED

A 2002 budget amendment will be necessary to cover these costs.

RECOMMENDATION

Adopt the attached resolution and MOA.

2002-03(c)

AGREEMENT FOR ANIMAL CONTROL SERVICES

This is an agreement between the City of Muskegon (hereinafter "City") of 933 Terrace Street, Muskegon, Michigan and the County of Muskegon (hereinafter "County") of ____ Terrace Street, Muskegon, Michigan 49440 entered into on this effective date of April 1, 2002.

Recitals

A. The City of Muskegon has a cat problem. Stray cats are multiplying and becoming a nuisance throughout the City.

B. The County which is primarily responsible for animal control in the County of Muskegon is willing to assist the City of Muskegon with the problem, provided that the City will supply funding and arrange for supplementary services in connection with the animal control functions requested of the County regarding cats.

C. The parties recognize the County's animal control function pursuant to the various statutes in the State of Michigan, and further recognize that the City of Muskegon has passed an ordinance amending its animal control ordinances in appropriate ways.

D. In addition to the services of the County pursuant to state law the City of Muskegon wishes to contract with the County for the services provided in this agreement. The services set forth in this agreement are supplementary to and not in substitution for the County's animal shelter and animal control functions.

E. It is understood that the County's functions under this contract will be primarily administered by the Muskegon County Health Department and its animal control personnel.

NOW, THEREFORE, THE PARTIES, INCORPORATING THE RECITALS ABOVE, HEREBY AGREE, AS OF THE EFFECTIVE DATE:

Staffing and Fees

1. The County will provide an animal control officer to function with the authority of an ordinance enforcement officer and representative of the City of Muskegon on a part-time basis no less than twenty hours per week. The said animal control officer may be a full-time County employee who spends part of his or her time functioning as the animal control enforcement officer of the City pursuant to this agreement.

2. <u>Services Provided</u>: Services provided by the animal control officer in the course of service to the City of Muskegon, in addition to administering the general animal control laws of the state, county and city, the animal control officer shall focus on the following:

   a. Timely response to assist City police officers with vicious or dangerous animal complaints.

b. Ensuring that both cats and dogs are properly licensed in the city, and carrying on licensing functions for cats as needed or agreed.

c. Assisting with trapping or collecting properly trapped animals detained by city staff or residents.

d. Dealing with the capture, trapping, or collecting of cats which are strays or at large in violation of the City's ordinances, and delivering them to an animal control shelter contracted or designated by the City, which includes, without limitation, the County animal shelter if deemed appropriate by the County.

3. Dedicated Hours: Although flexibility in assignments is necessary, in general, the hours of the animal control officer within the City limits of Muskegon will be 8:30-5:00, Mondays, Fridays and Tuesdays or Thursdays.

4. Compensation: The City agrees to pay the County, for services during the year 2002, beginning on April 1, 2002, the sum of $18,600 payable on April 1, July 1, and October 1 upon request by the County, in equal payments of $6,200 per payment. After 2002 the City will pay to the County $24,800 for each calendar year, consisting of quarterly payments in the amount of $6,200 due on January 1, April 1, July 1, and October 1, upon request for payment by the County.

5. Equipment: The County agrees to provide the City-dedicated animal control officer with a vehicle, and all necessary training and equipment to execute his or her duties, including micro-chip identifying equipment for those animal owners who choose micro-chip implants over traditional license tags. Overtime hours, requested by the City, shall be reimbursed to the County after appropriate documentation is provided by the County to the City Manager's office.

6. Oversight; Wages and Compensation: The City-dedicated animal control officer will remain an employee of the County. As such, the Director of Animal Control or such other person designated by the County shall supervise this individual. The said supervisory person shall, however, coordinate with the City to ensure that the animal control officer is providing proper service to the City. The County shall remain responsible for all compensation due by way of salary, wages or benefits, social security, etc. for the animal control officer who shall be an employee of and supervised by the County.

7. Reporting: The County will provide a monthly report of activities in the City to City staff the first week of the month for the previous month. The report will include information on such things as: number of animals taken into custody, type and number of citations issued, and schedule of time spent on duty by the week. Additionally, City and County Animal Control staff shall meet quarterly to discuss program needs and issues.

8. Education: The County through its designated animal control officer will help distribute licensing information and educational materials, as appropriate, on the City's behalf.

Care

9. Housing: The County, through its animal control facility will provide eight (8) temporary emergency cages for cats from the City of Muskegon until they can be transported to another facility. It is understood that preferred housing for trapped cats will be the Humane Society and West Michigan Society for Protection and Care of Animals.

10. Euthanasia: Badly injured or dangerous feral cats will be euthanized by County Animal Control for the City of Muskegon and the Muskegon County Humane Society, provided that state laws shall be followed.

11. State Laws: Nothing in this agreement concerning the care or euthanizing of cats shall supercede or be followed contrary to the laws of the State of Michigan as they may apply to licensed animal shelters or the care of animals.

Licensing

12. Licensing Officer; Fees; The animal control officer, or such other persons as the City may designate, shall be the Licensing Officers for and shall carry on the licensing process for cats. All license fees received shall be the property of and turned over to the City. All fees for impounding, licensing and related matters shall be determined by the City Commission by resolution.

13. Record Keeping: The County shall develop and maintain the cat licensing database, which will parallel the dog licensing database.

14. Licensing Process: The process and procedures for cat licensing, including timeline and forms, will also parallel the current dog licensing system.

15. Licensing Timeframe: After the initial licensing cycle, which will begin April 1, 2002, thereafter, the regular licensing schedule for cats will be October 1st through December 31st.

16. Licensing Start-up: Initial licenses for the new cat-licensing program shall be the responsibility of the County. Forms and educational materials will be made available to city residents by city staff. After the initial cat licensing effort, the City Treasurer's office will take cat-licensing fees under the same process that dog licensing fees are currently taken.

Miscellaneous Expenses and Provisions for Application of Fees

17. Program Start-up: The City will reimburse the County to cover the initial cost of modifying the existing Animal Control Database and to obtain license tags. Appropriate forms and database shall be in place to administer the cat-licensing program by April 1, 2002.

18. Collection Fee: The standard license collection fee paid to the City Treasurer's office by the county for the collection of dog license fees will not be provided for cat licenses.

19. Impound fees: Impound fees set by the City and collected for cats by the County in its animal control function shall be retained by the County and used to help maintain the County animal control shelter. This shall not include impound fees collected by contracted animal shelters, which may retain impound fees they collect.

Term

20. This agreement shall be automatically renewed from year to year on January 1st. In the event either party wishes to terminate this agreement it may do so at any time provided such termination shall require a 90 day written notice delivered to the other.

Insurance

21. Both parties agree to provide that the activities of the animal control officer and the functions of both parties regarding animal control of the City of Muskegon are covered by insurance or Risk Authority agreements. There are no cross-indemnities, but the undertaking to maintain insurance or other appropriate coverage (including self-insured coverage as may be preferred) is a condition binding on both parties for the duration of this agreement.

Miscellaneous

22. There is no third party beneficiary covered by this agreement. It binds and benefits only the parties and their assignees permitted by this agreement.

23. This agreement shall be interpreted under the laws of the State of Michigan.

24. This agreement has been authorized for execution by the legislative bodies of both parties.

Date: 2/14/02	COUNTY OF MUSKEGON By Kenneth Hulka Kenneth Hulka, Chairman
Date: ________	And Susan Doriot Susan Doriot, County Clerk
Date: 1-10-02	CITY OF MUSKEGON By Steve Warmington, Mayor
Date: 1-10-02	By Gail A. Kundinger Gail A. Kundinger, Clerk

Date: January 2, 2002

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Transportation Improvements Program Submittal for: 2002-2004

SUMMARY OF REQUEST:

Authorize staff to submit a request to WMSRDC in which to remove Black Creek project from the 2004 TIP and replace it with Clay Ave. from Spring to Terrace. This request is due to the fact that in an effort to curb the pavement deterioration, Black Creek was placed on the 2002 CIP for improvements rather than wait until 2004 for the grant money.

FINANCIAL IMPACT:

None at this time, however, a local match equal to that that was approved for Black Creek will be required.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the project submittal

COMMITTEE RECOMMENDATION:

FY 2004 TRANSPORTATION IMPROVEMENT PROGRAM
PROJECT DETAIL BY FUNDING CATEGORY

FY 2004 STP URBAN

(Funding for projects in this category is capped. The local agency is responsible for its normal required local match plus any costs above and beyond the federal share listed in this table)

JOB #	C.S.	NAME	LIMITS	WORK	MI	FUND	TOTALCOST	FED (Capped)	STATE	LOCAL	LOC_UNIT
56377	61407	SHERMAN BLVD	LINCLON TO BEACH	MILL & RESURFACE		STPU	$450,000	$360,000	$0	$90,000	MU
56380	61407	BLACK CREEK ROAD	SHERMAN TO LATIMER	MILL & RESURFACE		STPU	$450,000	$360,000	$0	$90,000	MU
56382	61407	SUMMIT AVENUE	ROOSEVELT TO GLENSIDE	RECONSTRUCT		STPU	$281,808	$225,446	$0	$56,362	RP
56383	61407	GETTY STREET	BROADWAY TO SHERMAN	COLD MILL, HNDCP RAMPS, CURB & GUTTER		STPU	$375,000	$300,000	$0	$75,000	MH
56386	61407	SEMINOLE ROAD	HENRY TO HIGH SCHOOL	LEFT TURN LANE		STPU	$300,000	$250,000	$0	$50,000	NS
56388	***61407***	***WHITEHALL ROAD***	***RIVER TO GILES***	***RECONSTRUCT FROM 2 TO 5 LANES, STORM SEWER***		***STPU***	***$1,100,000***	***$868,180***	***$0***	***$231,820***	***MCRC***
		TOTAL 2004					***$2,956,808***	***$2,363,626***	***$0***	***$593,182***	

*IN THE EVENT THAT MORE FEDERAL STPU STREET AND HIGHWAY FUNDING BECOMES AVAILABLE FOR FY 2004, MUSKEGON COUNTY ROAD COMMISSION WILL RECEIVE SUCH ADDITIONAL FUNDS FOR THEIR WHITE HALL ROAD PROJECT, TO BRING THAT PROJECT UP TO 80/20 FEDERAL/LOCAL SPLIT. 80% IS THE MAXIMUM FEDERAL PARTICIPATION CAP FOR AN STPU STREET OR HIGHWAY PROJECT. 80% OF $1,100,000 IS $880,000, OR $11,820 DOLLARS MORE THAN SHOWN ABOVE. AN INCREASE IN FEDERAL STPU REVENUES IN FY 2004 COULD THUS REDUCE LOCAL FINANCIAL COSTS BY $11,820, DOWN TO $220,000.

FY 2004 STP RURAL

Projects for this category are selected by the ISTEA Rural Task Force 14.

JOB #	C.S.	NAME	LIMITS	WORK	MI	FUND	TOTALCOST	FED	STATE	LOCAL	LOC_UNIT

Commission Meeting Date: January 8, 2002

Date: **January 2, 2002**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services** W. G. G

Department

RE: **Purchase of 428 Marquette**

SUMMARY OF REQUEST: To approve the purchase of the property located at 428 Marquette (City of Muskegon revised Plat of 1903 E 12 feet lot 11 and W 31.5 feet of lot 12 block 11) 78' x 132' from Bankhead Education Consulting for the appraised price of $6,200.00.

After approval of the purchase by the Commission the CNS department will demolition the existing structure combine the lots and build a ranch style home in conjunction with the City's Jackson Hill Infill program a.k.a. Operation J-Hill.

FINANCIAL IMPACT: Funding for purchase, demolition and construction will come from the City's 2000 and 2001 HOME funding.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

COMMITTEE RECOMMENDATION: None

2002-03(e)

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is effective on December 15 2001, by and between **Bankhead Education Consulting**, a sole proprietorship, of 4328 Schafer Road, Dearborn, MI 48126 ("Seller"), and the **City of Muskegon**, a Michigan municipal corporation, with offices at 933 Terrace Street, Muskegon, MI 49442 ("Buyer").

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title, and interest in all adjoining public ways, the real property located at 428 Marquette in the City of Muskegon, County of Muskegon, State of Michigan, and legally described as:

   City of Muskegon revised Plat of 1903 E 12 feet Lot 11 and W 31-1/2 feet Lot 12 block 11 and E 34-1/2 feet Lot 12 block 11

subject to the reservations, restrictions, and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law.

2. **Consideration and Manner of Payment.** In exchange for a warranty deed from Seller to Buyer, Buyer shall pay $6,200 at closing, and shall take the property subject to a possible obligation to demolish the structure. Buyer shall be solely responsible for the expenses of demolition and waive any claims for demolition expenses from Seller.

3. **Taxes and Assessments.** All taxes and assessments due and payable at the time of Closing, including the December, 2000, and December, 2001, tax bill shall be paid by Seller prior to or at Closing. All taxes and special assessments that become due and payable after Closing, excluding the December, 2001, tax bill shall be the responsibility of Buyer.

4. **Title Insurance.** Buyer shall obtain a commitment for title insurance issued by Harbor Title, for an amount not less than the purchase price guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment are, in the sole discretion of Buyer, deemed unreasonable, Seller shall have thirty (30) days from the date Seller is notified, in writing, of such unreasonableness of restriction and such unmarketability of title to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale, as herein provided, within ten (10) days of written notification thereof. If Seller fails to resolve such restrictions or remedy the title within the time above specified, or fails to obtain satisfactory title insurance, this Agreement will be terminated, at Buyer's option. The premium for the owner's title policy shall be paid by Buyer.

5. **Survey.** Buyer, at its own expense, may obtain a survey of the Premises, and Buyer or its surveyor or other agents may enter the Premises for that purpose prior to Closing. If no survey is obtained, Buyer agrees that Buyer is relying solely upon Buyer's own judgment as

to the location, boundaries and area of the Premises and improvements thereon without regard to any representations that may have been made by Seller or any other person. In the event that a survey by a registered land surveyor made prior to closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Agreement, and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

6. **Personal Property and Fixtures.** All personal property and fixtures, which Seller wishes to remove, shall be removed on or before Closing. Any personal property left on the Premises shall be the property of Buyer, who may dispose of same.

7. **Environmental Matters.** Seller represents and warrants to Buyer that Seller has not disposed of any hazardous or toxic substances on or in the Premises. Such representation and warranty shall be deemed to have been made again by Seller as of the Closing. Seller agrees to indemnify Buyer and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages, and losses, including, but not limited to, reasonable attorneys' fees, resulting from any misrepresentation or breach of the warranty set forth in this paragraph, which representation and warranty shall survive the Closing.

8. **Condition of Premises and Examination by Buyer.** No implied warranties of habitability, quality, condition, fitness for a particular purpose, or any other implied warranties shall operate between Seller and Buyer, and Buyer expressly waives any and all such implied warranties. Buyer understands and agrees that the premises is taken "as is," subject to the express covenants, conditions and/or express warranties contained in this Agreement, also subject to the warranty of Seller that no hazardous substances have been placed on the premises. Buyer further says that it has personally inspected the premises and is satisfied with the condition of the land, and the buildings and improvements thereon, and that the property is being purchased as a result of such inspection and investigation and not due to any representations made by or on behalf of seller except for express warranties.

9. **Real Estate Commission.** Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

10. **Closing.** The closing date of this sale shall be on or before 60 days following the effective date of this Agreement ("Closing"). The Closing shall be conducted at the closing facilities of Harbor Title, 955 West Broadway, Muskegon, MI 49441, or at such other place as may be mutually agreed upon between the parties.

11. **Delivery of Deed.** Seller shall execute and deliver a warranty deed to Buyer at Closing for the Premises.

12. **Affidavit of Title.** At the Closing, Seller shall deliver to Buyer an executed Affidavit of Title.

13. **Date of Possession.** Possession of Premises is to be delivered to Buyer by Seller on the date of Closing.

14. **Costs.** Seller shall be responsible to pay the Michigan transfer tax in the amount required by law and to pay for the obtaining and recording of any instrument, which must be recorded to clear title to the extent, required by this Agreement, one-half of the closing fee, and the title insurance premium. Buyer shall pay for the cost of recording the warranty deed to be delivered at Closing and one-half of the closing fee. Each party shall pay their own attorney fees.

15. **General Provisions.**

a. **Paragraph Headings.** The paragraph headings are inserted in this Agreement only for convenience.

b. **Pronouns.** When applicable, pronouns and relative words shall be read as plural, feminine or neuter.

c. **Merger.** It is understood and agreed that all understandings and agreements previously made between the Buyer and Seller are merged into this Agreement, which alone fully and completely expresses the agreement of the parties.

d. **Governing Law.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan.

e. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their successors and assigns.

f. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

g. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for herein shall survive the Closing, and continue in full force and effect after the consummation of this purchase and sale, and continue until all liabilities of Buyer have been fully satisfied.

h. **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by Seller and Buyer.

i. **Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement.

WITNESSES:

SELLER – **Bankhead Education Consulting**, a sole proprietorship

By ______________________
Tressa Bankhead, Its President

On: December 15, 2001

BUYER: **CITY OF MUSKEGON**, a Michigan municipal corporation

Linda Potter
Linda Potter

By ______________________
Steve Warmington, Mayor

Irene Dempsey
Irene Dempsey

By Gail A. Kundinger
Gail A. Kundinger, City Clerk

Prepared by:
John C. Schrier
Parmenter O'Toole
175 W. Apple Avenue
P.O. Box 786
Muskegon, MI 49443-0786
Telephone: 231/722-5401

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Commission Meeting Date: January 8, 2002

Date: **January 2, 2002**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department** CBC

RE: **Approval of Proposal from Charles Eckenstahler for Consulting Services for the LDFA SmartZone**

SUMMARY OF REQUEST: To approve the attached Proposal/Contract between Charles R. Eckenstahler and the City of Muskegon for services related to the preparation of the Smartzone LDFA Plan.

FINANCIAL IMPACT: The amount of the Contract is $5,500. The City's General Fund will pay this amount and will be reimbursed through LDFA funds in the future.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached Proposal/Contract and authorize the Mayor to sign the Proposal/Contract.

COMMITTEE RECOMMENDATION: None.

2002-03(f)

PCT
PUBLIC CONSULTING TEAM

Benton Harbor
Michigan
49022

219-879-1012
FAX 219-879-5340

December 27, 2001

Ca thy Brubaker-Clarke
Director of Community and Economic Development
City of Muskegon
933 Terrace Street
P. O. Box 536
Muskegon, MI 49443-0536

Dear Ms. Brubaker-Clarke;

We are pleased to present our proposed scope of services and qualifications to prepare a Development and Tax Increment Financing Plan for the recently approved "Smart Zone" Local Development Financing Authority.

We have written our proposal according to our recent conversation and our understanding of the Smart Zone requirements. We propose to prepare a document addressing the requirements of the LDFA, Act P.A. 281 of 1986, as amended, including a summary of the current development plan, an estimate of tax increment funds for the LDFA and a schedule of funding of specific projects to be undertaken.

Our proposed outline is as follows:

Section 1 - Introduction and General Overview
Section 2 - Summary of the Smart Zone and Role of the LDFA
Section 3 - Development Plan Update (Section 15 requirements)

- A - Mission Statement of the Authority
- B - Description of the Development Area Boundaries
- C - Description of Public Properties in Relation to Streets and Roadways.
- D - Description of the Development Area in relations to Surrounding Land Use
- E - Description of the Development Area and Anticipated Infrastructure Improvements.
- F - Proposed Development Program
- G - Schedule of Improvements and Programs
- H - Identification of any Property Acquisition and Disposition.
- I - Description of Zoning Changes, if any.
- J - Proposed Method of Financing
- K - Ability of the Authority to Arrange Financing
- L - Residential Population and Displacement of Persons

Section 4 - Tax Increment Financing Plan (Section 17 requirements)

A - Current assessed valuation
B - Explanation of tax increment procedures
C - Use of debt, if any contemplated
D - Duration of TIF
E - Estimate of annual captured assessed valuation and increment revenues
F - Use of funds captured
G - Impact of capture upon taxing jurisdictions

Appendix

Resolution of determination of public purpose and adoption ordinance

Much of the information for the sections will originate from current information prepared as part of the Smart Zone application. We will need to schedule meetings with the City Assessor, Director of Public Works, Zoning Administrator, and Smart Zone representatives to verify certain input data. As discussed, I would also like to hold a preliminary meeting with MEDC and Treasury review officials to assure we address any of their concerns in our initial draft document.

I anticipate that it will require about sixty days to complete the assignment. In the first thirty days we will hold two meetings. The first session will be to gather required information and confirm cost and project scheduling. The second meeting will be a review of the estimated tax increment funds and project expenses. Early in the second month we would meet to review the draft plan in anticipation of required public hearing. Before the finalizing public hearing draft we would schedule and meet with the state reviewers. I would attend the LDFA meeting (if required) and the City Council public hearing and adoption session to assist with presentation of the document.

I am prepared to undertake this assignment immediately for the fixed fee of five thousand five hundred dollars ($5,500.00). I would invoice for one-half of the fee upon completion of the two initial meetings. The remaining invoice would be submitted upon delivery of the final document. We will provide ten copies of the final document.

Sincerely,

Charles R. Eckenstahler

ACCEPTANCE

City of Muskegon, Michigan

BY: ______________________
Steve Warmington, Mayor

DATE: 1-09-02

law offices of | **PARMENTER O'TOOLE**
175 West Apple Avenue • P.O. Box 786 • Muskegon, Michigan 49443-0786
Phone 231.722.1621 • Fax 231.722.7866 or 728.2206

December 3, 2001

Ms. Gail A. Kundinger, Clerk
City of Muskegon
P.O. Box 536
933 Terrace Street
Muskegon, MI 49443

Re: Postponed motion in January

Dear Gail,

On July 11, 2001, the City Commission voted and passed a motion "to postpone consideration of the question to terminate the City Manager until Tuesday, January 8, 2002." You asked how this should be treated procedurally at the meeting on that day, which will be a regular meeting of the Commission. I am assuming that in the organizational meeting the day before, the manager will be appointed to continue, and that continued consideration of the motion to terminate will be, of course, inappropriate.

None of the commissioners who moved to terminate at the regular meeting in July (7/10/01) is presently on the Commission, so withdrawing of the motion by a movant is not possible. Nor is it certain that the Commission can take the position that the new Commission is somehow legally prevented from considering a matter raised by the previous commission, since it was intentionally postponed until the January date, a date occurring after the election. Accordingly, some action must be taken, since it would, by vote of the Commission prior to the election, come up as an agenda item. I suggest a motion by a Commissioner:

> "To refrain from further consideration of the question and previous motions to terminate the City Manager, and take no further action in the matter."

There are other ways, but they involve leaving the question up in the air, such as tabling, which makes it available to pull it off the table at a subsequent meeting, or doing nothing and ruling that the motion does not survive the election and changes in the Commission. Uncertainty results from either of these, and I do not recommend them.

Very truly yours,

G. Thomas Johnson
Direct Dial: 231/722-5400
E-mail: gtj@parmenterlaw.com

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CITY OF MUSKEGON
CITY COMMISSION
SPECIAL MEETING
JULY 11, 2001
Minutes

The special meeting was called to order by Mayor Nielsen at 5:30 p.m. Also present were Commissioners Benedict, Schweifler, Shepherd, Spataro, Aslakson, and Vice Mayor Sieradzki.

Mayor Nielsen led the Prayer and Pledge of Allegiance to the Flag.

Motion by Commissioner Benedict, seconded by Vice Mayor Sieradzki, to terminate the City Manager, Bryon Mazade, by July 24, 2001 or accept his resignation by that date.

NO VOTE TAKEN.

The Mayor recognized Vern Kortering, Attorney for the City Manager. He stated that the City Manager would like to go into closed session.

Motion by Commissioner Benedict, seconded by Commissioner Aslakson, to go into closed session at 5:35 p.m.

ROLL VOTE: 7 Yeas (Schweifler, Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen)
0 Nays

MOTION PASSES

Motion by Aslakson, seconded by Schweifler, to go back in to open session at 6:15 p.m.

ROLL VOTE: 7 Yeas (Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen, Schweifler)
0 Nays

MOTION PASSES

Motion by Commissioner Schweifler, seconded by Commissioner Aslakson, to postpone consideration of the question to terminate the City Manager until Tuesday, January 8, 2002.

ROLL VOTE: 4 Yeas (Schweifler, Shepherd, Spataro, Aslakson)
3 Nays (Nielsen, Sieradzki, Benedict)

MOTION PASSES

Motion by Commissioner Aslakson, seconded by Commissioner Schweifler, to adopt a plan of action to address the concerns of any City Commissioner regarding our City Manager's performance with input from all appropriate parties on or before September 11, 2001. (Six month evaluation)

ROLL VOTE:	6 Yeas (Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd) 1 Nay (Sieradzki)

MOTION PASSES

Motion by Commissioner Aslakson, seconded by Commissioner Spataro, to adjourn at 6:31 p.m.

VOTE:	7 Yeas 0 Nays

MOTION PASSES

Respectfully submitted,

Gail A. Kundinger

Gail A. Kundinger, CMC
City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 10,2001

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, July 10, 2001.

Mayor Fred J. Nielsen opened the meeting with a prayer after which members of the City Commission and the members of the public joined in reciting the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Fred J. Nielsen; Vice-Mayor Scott Sieradzki; Commissioner Lawrence Spataro, John Aslakson, Jone Wortelboer Benedict, Robert Schweifler, and Clara Shepherd; Assistant City Manager Lee Slaughter; City Attorney Tom Johnson; and City Clerk Gail Kundinger.

Vice-Mayor Sieradzki announced that it was Mayor Nielsen's birthday and the City Commission purchased a cake for him.

2001-78 HONORS AND AWARDS:

a. **<u>2001 Mrs. Muskegon County International.</u>**

Resolution was presented to Victoria Evans by Vice-Mayor Scott Sieradzki.

b. **<u>Michigan Municipal League Award.</u>**

Resolution was presented to Melanie Smith by Commissioner Aslakson.

2001-79 CONSENT AGENDA: Items listed under the Consent Agenda have been considered to be routine in nature and will be enacted in one motion. No separate discussion will be held on these items. If discussion of an item is required, it will be removed from the Consent Agenda and be considered separately.

a. **<u>Approval of Minutes.</u>** CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, June 26, 2001.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

d. Cemetery Building Renovation. LEISURE SERVICES

SUMMARY OF REQUEST: To award a contract to VanderVen Construction to renovate the outside of the Cemetery office.

FINANCIAL IMPACT: $35,769. $70,000 was budgeted.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve

e. Purchase of Property from Pakren Associates for the Bike Path. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Approval of resolution, purchase agreement and purchase agreement addendum for property owned by Pakren Associates, which is required for the continuation of the bike path along Laketon Avenue. The purchase price is $11,000. The purchase agreement has already been signed by Pakren Associates.

FINANCIAL IMPACT: Purchase will allow the Laketon Ave. bike path project to continue. The price for the property is $11,000 and the purchase will be completed with funds received from the sale of the Chase Hammond Golf Course.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends that the Mayor and Clerk sign the resolution, purchase agreement and purchase agreement addendum, and recommends that the City Commission authorize staff to complete the purchase according to the terms of the agreement.

f. Sale of Buildable Vacant Lot on Yuba Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of a vacant buildable lot on Yuba Street to Gracie Scott, of 937 Lighton, Muskegon, MI. The lot is 77 x 132 feet, and is being offered to Ms. Scott for $3,000. She plans to use the land for the construction of a 1,448 sq. ft. single-family home with a two-stall attached garage. Ms. Scott is a participant in the City's In-Fill program. The price of the lot is set through the Jackson Hill Marketing Plan at $3,000 and Ms. Scott submitted the only bid of $3,000.

FINANCIAL IMPACT: The sale of this lot for construction of a new home will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution.

COMMITTEE RECOMMENDATION: The LRC approved the extension of the Jackson Hill Marketing Plan late in 2000.

g. Sale of Non-Buildable Lot on Marquette Ave. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of a vacant non-buildable lot on Marquette Avenue to Linda Johnson of 1116 Marquette Avenue. Approval of this sale will allow Ms. Johnson to expand her current yard. The subject parcel is being offered to Ms. Johnson for $100. The parcel is located on a corner and there are no other adjacent property owners. The other two lots previously owned by the City on that block were sold to John Morrison last fall for additional yard space for his rental home.

FINANCIAL IMPACT: The sale of this lot will allow the property to be placed back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign the resolution.

h. **Sale of a Buildable Lot in Campbell Neighborhood.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: A city-owned lot in Campbell neighborhood was advertised for bid on June 17, 2001. The City did not receive other bids except from Mr. Gary Smith in the amount of $10,025. The buyer understands the conditions and requirements of the purchase agreement which includes construction of a single-family residential home within 18 months, and existing trees shall not be cleared except to accommodate the structure and driveway. Mr. Smith will build a 1500 sq. ft. house with an attached 2-stall garage. Other policies will also apply.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval to sell the property to Mr. Gary D. Smith for $10,025.

j. **Payment Authorization, Emergency Storm Sewer Repair.** DEPARTMENT OF PUBLIC WORKS

SUMMARY OF REQUEST: Authorize payment to Felco Contractors Incorporated for emergency storm sewer repair on Bourdon Street in May, 2001.

FINANCIAL IMPACT: $11,289.86

BUDGET ACTION REQUIRED: None, will be charged to Public Works' Highway Department budget.

STAFF RECOMMENDATION: Recommended approval.

Motion by Commissioner Schweifler, second by Vice-Mayor Sieradzki to approve the Consent Agenda with the exception of item b, c, and i.

ROLL VOTE: Ayes: Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro

Nays: None

MOTION ADOPTED

2001-80 ITEMS REMOVED FROM THE CONSENT AGENDA

b. **Liquor License Request (1301 E. Apple).** CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Bunty, Inc. to add a new Specially Designated Distributor license, to be held in conjunction with the proposed New Specially Designated Merchant license.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: ALL Departments are recommending approval.

Motion by Commissioner Aslakson, second by Commissioner Schweifler to recommend approval of the addition of a new SDD license at 1301 E. Apple.

ROLL VOTE: Ayes: Benedict, Nielsen, Schweifler, Shepherd, Spataro, Aslakson

Nays: Sieradzki

MOTION ADOPTED

c. <u>Liquor License Request (1163 E. Laketon).</u> CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from PNS#9, Inc. to transfer all stock in the 2001 Class C licensed business by dropping Alfonso Loera, deceased, as stockholder through transfer of his 10,000 shares of stock to new stockholder, Anita Loera.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: All Departments are recommending approval.

Motion by Vice-Mayor Sieradzki, second by Commissioner Aslakson to approve the transfer.

ROLL VOTE: Ayes: Nielsen, Schweifler, Shepherd, Sieradzki, Spataro, Aslakson, Benedict

Nays: None

MOTION ADOPTED

i. <u>Revenue/Collections Administrator Position.</u> CITY TREASURER

SUMMARY OF REQUEST: To reclassify the current Deputy Treasurer position to Revenue/Collections Administrator along with the salary pay range from range X to range VIII of the non-represented employees' salary schedule.

FINANCIAL IMPACT: Staff expects that the costs of the position changes will be more than offset by:

1) Reduction in accounts receivable days and improvement in the city's cash flow.
2) Reduction in bad debts that are written off.
3) Improved collections due to the knowledge of debtors ("slow-pays") that the City is focusing more attention to this area.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request to reclassify the position.

COMMITTEE RECOMMENDATION: The Civil Service Commission approved the job description at their meeting on May 22, 2001.

Motion by Commissioner Aslakson, second by Commissioner Spataro to approve the Revenue/Collections Administrator Position.

ROLL VOTE: Ayes: Schweifler, Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen

Nays: None

MOTION ADOPTED

2001-80 PUBLIC HEARINGS:

a. **Request for an Industrial Facilities Exemption Certificate, Bekaert Corporation**. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Bekaert Corporation, 2121 Latimer, Muskegon, Michigan, a plant that fabricates high tech mechanical spring wire, has requested the issuance of an Industrial Facilities Exemption Certificate. Total capital investment for this project is $233,000 in real property and $2,999,364 in personal property for a total of $3,232,364. The project will result in the creation of three employment opportunities while retaining six jobs. Bekaert's current workforce is 73.

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

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate for a term of 12 years for real property and 6 years for personal property.

The Public Hearing opened at 6:04 p.m. to hear and consider any comments from the public. Matthew Dugener explained the item. No public comments were heard.

Motion by Commissioner Schweifler, second by Commissioner Shepherd to close the Public Hearing at 6:09 p.m. and approve the issuance of an Industrial Facilities Exemption certificate.

ROLL VOTE: Ayes: Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen, Schweifler

Nays: None

MOTION ADOPTED

COMMUNICATIONS: None

CITY MANAGER'S REPORT: None

UNFINISHED BUSINESS: None

2001-82 NEW BUSINESS:

a. **Sister City Representation – Kamasi Ghana.** BOB KUHN

SUMMARY OF REQUEST: Director of Public Works, Robert Kuhn, is scheduled to be a part of a mission trip to Kamasi Ghana in September 2001. He is requesting permission to represent the City of Muskegon for the purpose of discussing the possibility of a future Sister City relationship between Muskegon and Kamasi.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

Motion by Commissioner Spataro, second by Commissioner Shepherd to authorize Bob Kuhn to represent the City of Muskegon and his trip to Kamasi Ghana and enter into discussion with them on the possibility of a future Sister City relationship between Muskegon and Kamasi.

ROLL VOTE: Ayes: Sieradzki, Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd

Nays: None

MOTION ADOPTED

b. **Designation of voting delegates for Michigan Municipal League Annual Meeting on September 12-14,2001**. CITY CLERK

SUMMARY OF REQUEST: To designate voting delegates for the Michigan Municipal League Annual Business Meeting, September 12-14, 2001.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

Motion by Commissioner Shepherd, second by Commissioner Spataro to designate Mayor Nielsen and Vice-Mayor Sieradzki to represent the City Commission at the MML Conference in September at Battle Creek.

Motion amended by Commissioner Benedict, second by Vice-Mayor Sieradzki to designate Commissioner Shepherd as the alternate.

ROLL VOTE ON THE AMENDMENT:

Ayes: Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Sieradzki

Nays: None

AMENDMENT ADOPTED

ROLL VOTE ON THE ORIGINAL MOTION WITH THE AMENDMENT:

Ayes: Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro

Nays: None

MOTION WITH AMENDMENT ADOPTED

Motion by Commissioner Aslakson, second by Commissioner Benedict to designate Mayor Nielsen to carry the flag at the MML Conference.

ROLL VOTE: Ayes: Nielsen, Shepherd, Sieradzki, Spataro, Aslakson, Benedict

Nays: None

Absent: Schweifler (stepped out of the room)

MOTION ADOPTED

c. **Large Meter Replacement**. DEPARTMENT OF PUBLIC WORKS

SUMMARY OF REQUEST: To approve the proposal with Metron Farnier to replace 400 large meters 1½ inch through 8 inch at the cost of $946,798.

FINANCIAL IMPACT: $946,798 Water/Sewer Fund

BUDGET ACTION REQUIRED: Initial cost will be made with cash on hand from water and sewer funds. A budget adjustment will be made during the second quarter budget reforecast. The meter replacement program is expected to pay for itself with recovered revenue in two to five years.

Motion by Vice-Mayor Sieradzki, second by Commissioner Schweifler to approve the large meter replacement.

ROLL VOTE: Ayes: Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro, Aslakson

Nays: None

Motion Adopted

d. <u>Replace Water Services on Marquette.</u> ENGINEERING

SUMMARY OF REQUEST: To authorize Jackson Merkey, the contractor on the County Force Main project, to replace the galvanized water services they encounter while placing the force main with copper services. Jackson Merkey would bill the City directly for the cost of replacement which is expected to be around $50,000. The billing would be in accordance with the unit prices submitted on their bid. By authorizing this work, the City would avoid the possible need to dig-up those "new" streets in the near future. Most of the galvanized services are expected to be in Marquette between Getty & US-31BR.

FINANCIAL IMPACT: The cost of replacing about forty (40) galvanized water services for an estimated cost of about $50,000.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To authorize Jackson Merkey to replace the services.

Motion by Commissioner Spataro, second by Commissioner Aslakson to authorize Jackson Merkey to replace the services.

ROLL VOTE: Ayes: Schweifler, Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen

Nays: None

MOTION ADOPTED

e. <u>Concurrence with the Housing Board of Appeals Notice and Order to Demolish for the following</u>:

<u>1)</u> 186 & 186 ½ Strong.

<u>2)</u> 2130 W. Sherman. *(Staff requested this item be withdrawn)*

<u>3)</u> 247 W. Forest.

<u>4)</u> 286 Irwin.

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the above mentioned structures are unsafe, substandard, a public nuisance and that they be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: All are CDBG

BUDGET ACTION REQUIRED: None

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

VOTED ON SEPERATELY

1) 186 & 186 ½ Strong

Motion by Commissioner Aslakson, second by Commissioner Schweifler to concur with Housing Board of Appeals decision to demolish.

ROLL VOTE: Ayes: Shepherd, Spataro, Aslakson, Benedict, Nielsen, Schweifler

Nays: Sieradzki

MOTION ADOPTED

2) 2130 W. Sherman (item withdrawn – no action taken)

3) 247 W. Forest

Motion by Commissioner Spataro, second by Commissioner Schweifler to concur with the Housing Board of Appeals decision to demolish.

ROLL VOTE: Ayes: Spataro, Aslakson, Nielsen, Schweifler, Shepherd

Nays: Sieradzki, Benedict

MOTION ADOPTED

4) 286 Irwin

Motion by Commissioner Spataro, second by Commissioner Schweifler to concur with the Housing Board of Appeals decision to demolish.

Motion and second amended by Commissioner Spataro and Commissioner Schweifler that within the next 30 days the owner is to put $5,000 in escrow and submit a timeline satisfactory to staff; if this does not happen, we would concur with the Housing Board of Appeals decision to demolish.

ROLL VOTE ON MOTION WITH AMENDMENT:

Ayes: Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro

Nays: None

MOTION AND AMENDMENT ADOPTED

f. **Core Communities Fund Application.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the resolution approving an application for a Core Communities Fund loan from the Michigan Economic Development Corporation in the amount of $1,000,000 for the development of a public seawall and boardwalk improvements on the former Teledyne property. And to approve the Certification and Repayment Agreement that outlines the repayment terms of the loan.

FINANCIAL IMPACT: The Core Communities Initiative loan must be repaid from increments captured by the Muskegon SmartZone LDFA amortized over a period of 15 years and at 3.5 percent interest. Annual payments to the MEDC will be approximately $86,000.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and Certification and Repayment Agreement.

Motion by Commissioner Schweifler, second by Commissioner Aslakson to approve the resolution for the application for the Core Communities fund loan.

ROLL VOTE: Ayes: Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro, Aslakson

Nays: None

MOTION ADOPTED

2001-83 ANY OTHER BUSINESS:

Commissioner Shepherd stated she received a call from Allen Avenue Church. They would like to meet with their Community Officer on Wednesday night at 7:00 p.m. reference a vandalism complaint. Assistant City Manager responded.

Commissioner Benedict stated she was not notified of the July 9, 2001, Special Meeting.

Motion by Commissioner Benedict, second by Vice-Mayor Sieradzki to terminate the City Manager effectively immediately or consider his resignation.

At 8:00 p.m., the Mayor called for a recess.

The Commission reconvened at 8:26 p.m.

Motion by Commissioner Aslakson, second by Commissioner Schweifler to table this item until the next meeting.

ROLL VOTE: Ayes: Schweifler, Spataro, Aslakson

Nays: Shepherd, Sieradzki, Benedict, Nielsen

MOTION FAILS

Original motion and second amended by Commissioner Benedict and Vice-Mayor Sieradzki to terminate the City Manager in two weeks at the next Commission Meeting or consider his resignation.

Motion by Commissioner Benedict, second by Vice-Mayor Sieradzki to call the question.

ROLL VOTE: Ayes: Shepherd, Sieradzki, Benedict, Nielsen

Nays: Spataro, Aslakson, Schweifler

MOTION FAILS

Motion by Commissioner Schweifler, second by Commissioner Spataro to request the Mayor to enforce the rules.

At 9:04 p.m. the Mayor called for a recess.

The Commission reconvened at 9:17 p.m.

ROLL VOTE: Ayes: Spataro, Aslakson, Schweifler

Nays: Sieradzki, Benedict, Nielsen, Shepherd

MOTION FAILS

Motion by Commissioner Schweifler, second by Commissioner Spataro to suspend the rules of the Commission.

ROLL VOTE: Ayes: Benedict, Nielsen, Shepherd, Sieradzki

Nays: Spataro, Aslakson, Schweifler

MOTION FAILS

Motion by Commissioner Benedict, second by Commissioner Shepherd to set a Special Meeting for tomorrow at 5:30 p.m. to discuss the City Manager's termination.

ROLL VOTE: Ayes: Benedict, Nielsen, Shepherd, Sieradzki

Nays: Aslakson, Schweifler, Spataro

MOTION ADOPTED

Motion by Commissioner Schweifler, second by Commissioner Aslakson to amend the previous motion to meet on the weekend or next week.

ROLL VOTE: Ayes: Schweifler, Spataro, Aslakson

Nays: Benedict, Nielsen, Shepherd, Sieradzki

MOTION FAILS

Motion by Commissioner Spataro, second by Commissioner Schweifler to conduct tomorrow's Special Meeting as a Public Hearing.

ROLL VOTE: Ayes: Schweifler, Spataro, Aslakson

Nays: Nielsen, Shepherd, Sieradzki, Benedict

MOTION FAILS

PUBLIC PARTICIPATION: Various comments were heard from the public.

2001-84 CLOSED SESSION: To discuss pending litigation.

Motion by Commissioner Benedict, second by Commissioner Aslakson to go into Closed Session at 9:45 p.m.

ROLL VOTE: Ayes: Schweifler, Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen

Nays: None

MOTION ADOPTED

Motion by Commissioner Aslakson, second by Commissioner Benedict to return from Closed Session at 9:47 p.m.

ROLL VOTE: Ayes: Shepherd, Sieradzki, Spataro, Aslakson, Benedict, Nielsen, Schweifler

Nays: None

MOTION ADOPTED

Motion by Commissioner Aslakson, second by Commissioner Schweifler to concur with the City Attorney's recommendation for 696 W. Southern.

ROLL VOTE: Ayes: Sieradzki, Spataro, Aslakson, Benedict, Nielsen, Schweifler, Shepherd

Nays: None

MOTION ADOPTED

ADJOURNMENT: The regular Commission Meeting for the City of Muskegon was adjourned at 9:48 p.m.

Respectfully submitted,

Gail A. Kundinger

Gail A. Kundinger, CMC/AAE
City Clerk

Commission Meeting Date: January 8, 2002

Date: **January 2, 2002**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services** W.G.G

Department

RE: **Lead Based Paint abatement at 1838 Jarman**

SUMMARY OF REQUEST: To approve the bid with Success Builders for the lead base paint abatement of the city-owned home at 1838 Jarman for $22,330.

After the lead base paint abatement is complete the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2000 HOME budget for lead based paint abatement.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Success Builders of Muskegon.

COMMITTEE RECOMMENDATION: None

Success Enterprise, Ltd.
5263 Apple Avenue
Muskegon, Michigan 49442
Phone: (231) 788-1570 or 788-6662
Fax: (231) 788-6342

BID FOR LEAD ABATEMENT
1838 JARMAN STREET

WINDOWS

1. a. Replace all windows with white vinyl double hung windows with screens.
   b. Encapsulate sills and casings or any framing around the window
   c. Encapsulate with Lead Lock and clean with Tri- Sodium Phosphate
   d. Haul all debris away at risk level # 3.
   e. Hepa vacuum to comply clearance.

Number of windows ___11___ Total window cost $ 4,675.00

DOORS

2. a. Replace entry door and frame with 1 3/4" steel door. Replacement doors are steel pre-hung with oak sills.
   b. Paint frame and brick mold or casing white.
   c. Haul all debris away at risk level # 1 & 3.
   d. Install new brass handle with dead bolt, all doors to be keyed alike.

Number of doors ___2___ Total door cost $ 1,600.00

SIDING

3. a. Tear off existing siding.
   b. Side home with vinyl 4 x 4 lap siding.
   c. Celetex fanfold and housewrap entire home.
   d. Install aluminum soffit fascia.
   e. Aluminum wrap all exterior framing of door and windows.
   f. Encapsulate all other exposed area with Lead Lock.
   g. Haul all debris away at risk level #3.
   h. Full abatement activity in progress. Home to be a lead contaminated site.
   i. Encapsulate front porch entry.

Siding and soffit ___Yes___ Total siding/soffit cost $ 9,700.00

Continued

ADD ONS TO 1838 JARMAN STREET BID

GARAGE SIDING

1. a. Tear off existing siding.
   b. Side garage with vinyl 4 x 4 lap siding.
   c. Celetex fanfold and housewrap entire garage
   d. Install aluminum soffit fascia.
   e. Aluminum wrap all exterior framing of door and windows.
   f. Encapsulate all other exposed area with Lead Lock.
   g. Haul all debris away at risk level #3.
   h. Full abatement activity in progress. Home to be a lead contaminated site.

Total siding/soffit cost $ 3,900.00

BASEMENT STAIRS

1. a. Encapsulate stair area walls.

Total encapsulant cost $ 690.00

STORM DOOR

1. a. Install a white, self-storing storm door on the back door.

Total storm door cost $ 245.00

CRAWL SPACE DOOR

1. a. Make and install new crawl space door.

Total crawl space door cost $120.00

INTERIOR DOORS

1. a. Remove doors; 2-Bedroom, 1-Kitchen and 1-Bathroom.
   b. Install birch doors; 2-Bedroom, 1-Kitchen and 1-Bathroom.
   c. Haul lead doors away.

Total door replacement $875.00

Full Risk Assessment	**$250.00**
Full Clearance Assessment	**$275.00**

TOTAL COST OF LEAD ABATEMENT $ **22,330.00**

Commission Meeting Date: January 8, 2002

Date: December 17, 2001

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Zoning Ordinance Amendment to allow specialized adult educational programs in the B-3, Central Business, District

---

SUMMARY OF REQUEST:

Request to amend Section 1201 (Special Land Uses Permitted) of Article XII (B-3, Central Business) of the City's Zoning Ordinance to allow specialized adult educational programs, under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to change the proposed language in the article and section described above.

COMMITTEE RECOMMENDATION:

The Zoning Board of Appeals classified this use as belonging in the B-3 district, under special use permit, on 11/13/01. The vote was unanimous with J. Aslakson and S. Schiller absent. The Planning Commission recommended denial of the current request on 12/13/01, because they did not feel that the use fits well within the downtown area. The vote to deny was unanimous, with D. Coleman absent.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2065

An ordinance to amend Sections 1201 (Special Land Uses Permitted), of Article XII (B-3, Central Business) of the City's Zoning Ordinance to add specialized adult educational programs, under certain conditions.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 1201 (Special Land Uses Permitted) of Article XII (B-3, Central Business) of the Zoning Ordinance of the City of Muskegon is hereby amended to add the following:

5. Specialized adult educational programs, under the following conditions:

   a. The program must be associated with a school district.

   b. No residency will be permitted in the facility.

   c. The hours of operation will be limited to the regular school hours of the associated school district.

   d. The facility must be located either on a major street or within two (2) blocks of regular bus service.

   e. No more than 75 students can be associated with the program.

This ordinance adopted:

Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd

Nayes: None

Adoption Date: January 8, 2002

Effective Date: January 22, 2002

First Reading: January 8, 2002

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 8th day of January, 2002, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: 1-09, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on January 8, 2002, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1201 (Special Land Uses Permitted), of Article XII (B-3, Central Business) of the City's Zoning Ordinance, to add the following:

5. Specialized adult educational programs, under the following conditions:

   a. The program must be associated with a school district.

   b. No residency will be permitted in the facility.

   c. The hours of operation will be limited to the regular school hours of the associated school district.

   d. The facility must be located either on a major street or within two (2) blocks of regular bus service.

   e. No more than 75 students can be associated with the program.

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

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

Published January 12, 2002

CITY OF MUSKEGON

By ______________________
Gail A. Kundinger
Its Clerk

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

Account No. 101-80400-5354

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

December 13, 2001

Hearing; Case 2001-43: Request to amend the Zoning Ordinance to add specialized adult educational programs as special uses permitted in the B-3, Central Business, zoning district.

BACKGROUND

The Muskegon Area Intermediate School District is looking to move their Adult Community Transitional Program into the lower level of the 5th/3rd Bank building on the corner of First St. and Clay Ave. The program has previously been housed in the Muskegon Mall, as a nonconforming use, but needs to move out of the mall. When the MAISD contacted staff about moving into the subject property, there was some discussion about the nature of the use. Schools are only permitted in residential districts, but the MAISD program has some rather specialized needs and the way the program was described to staff, it wasn't exactly like a school, per se. Therefore, staff was unsure of how to classify the use, so took it to the Zoning Board of Appeals for classification. The Zoning Board of Appeals classified the use to be permitted in the B-3, Central Business, district, under special use permit. A copy of the ZBA minutes for the November meeting is attached. The next step in the process is to actually amend the ordinance to add the use in the B-3 district, and for the MAISD to apply for the special use permit for their program. The special use permit request follows as the next case.

STAFF RECOMMENDATION

Staff recommends approval of the request.

MOTION FOR CONSIDERATION

I move that the Zoning Ordinance be amended to add the language proposed below:

To be inserted in Section 1201 (Special Land Uses Permitted) of Article XII (B-3, Central Business District) of the Zoning Ordinance:

5. Specialized adult educational programs, under the following conditions:

   a. The program must be associated with a school district.

   b. No residency will be permitted in the facility.

   c. The hours of operation will be limited to the regular school hours of the associated school district.

d. The facility must be located either on a major street or within 2 blocks of regular bus service.

e. No more than 75 students can be associated with the program.

[EXCERPTED FROM]

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

November 13, 2001

Vice-Chairman R. Hilt called the meeting to order at 4:00 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, R. Hilt, D. Narowitz, R. Smith, B. Larson

MEMBERS ABSENT: J. Aslakson, excused; S. Schiller, excused

STAFF PRESENT: D. Steenhagen, H. Griffith

OTHERS PRESENT: C. Taylor, Bekaert Corp; T. Miller, MAISD.

PUBLIC HEARINGS

Hearing; Case 2001-18: Request to interpret the Zoning Ordinance to classify what zoning district the Muskegon Adult Community Transition Program belongs in, by the Muskegon Area Intermediate School District. D. Steenhagen presented the staff report. The MAISD is looking to place their Muskegon Adult Community Transition Program at a site in the downtown Muskegon area. Although the program is run by the Intermediate School District, it does not function exactly like a school. They have some specialized needs, such as being close to the downtown bus station in order to minimize commuting time for their participants to job sites and shopping centers. Staff is unsure about what zoning district they should belong in, as it is similar to a school in some ways, but not exactly like a school. Schools are only allowed in residential districts, under special use permit. This use seems to need a more urban setting in order to utilize the urban infrastructure and help the participants learn their way around an urban setting. The MAISD would like the use to be allowed in the B-3 district, since that is where the building they are looking at is zoned. B-3 would allow accessibility to the bus station, as well as many of the work sites that are located in the downtown area. If the ZBA feels that this use does fit within the B-3 district, staff would propose that it be allowed only under special use permit, to give the Planning Commission oversight over the use.

B. Larson inquired where the building was they were looking at. T. Miller stated that they are in negotiations with 5th/3rd bank (the main building downtown). He stated that they had been in the mall for about 5 years and were asked to leave due to changes with the mall. He stated that there are no more than 15 students per instructor and they also have instructional assistants. The instructional assistants go out with the participants to teach them how to ride the bus, go grocery shopping, etc. in order to give the participants hands on experience. C. Kufta inquired how many people in the community would be eligible for the program. T. Miller stated that 50 would be the maximum since most would be able to graduate from regular or alternative education schools. D. Steenhagen inquired if the program was all year or just during the school year. T.

Miller stated that currently it is just during the school year, but it does have the potential to be able to go all year. C. Kufta inquired what criteria they are looking for when looking at a property to lease. T. Miller stated that they are looking for accessibility, the property would meet the Fire Marshal requirements, and there is a need for kitchen facilities since the participants would also be cooking and eating there. R. Hilt inquired about how disabled the participants were. T. Miller stated that the participants could recognize certain things such as the men or women restroom, exit signs, etc. They are taught key things because they don't have the functional reading skills that most people have.

A motion to close the public hearing was made by B. Larson, supported by C. Kufta and unanimously approved.

C. Kufta inquired about what happens once the ZBA determines what zoning this should be in. D. Steenhagen stated that a site plan would have to be submitted and that the Fire Department, Engineering Department, Department of Public Works will look it over and make recommendations, approval or disapproval of the plan. R. Hilt inquired if they would put a stipulation that would allow only non-violent participants, with no criminal histories. D. Steenhagen stated that the ZBA would also have the option to require a special use permit for this as a stipulation for the zoning. By having a special use permit requirement, this would go before the Planning Commission where they have the option to limit the hours of operation, etc.

A motion that the Adult Community Transition Program be classified as belonging in the B-3 zoning district, based on the following condition: 1) That the use be allowed only under special use permit, was made by B. Larson, supported by C. Kufta and unanimously approved.

hmg
11/13/01

MUSKEGON ADULT COMMUNITY TRANSITION PROGRAM

Introduction

The goal of the Adult Community Transition Program is to facilitate the integration of young adults with developmental disabilities (17-26 yrs) into the total community and to assist each individual in developing their maximum degree of independence. The program uses a functional skills curriculum delivered through a community based instructional model. Major areas of learning activities include; daily living skills, communication skills, functional academics, mobility, interpersonal skills, leisure activities, and employability skills. Successful participants in the Adult Community Transition Program will gain the skills necessary to transition from school to supported employment and/or community living.

Program Information

The Adult Community Transition Center should be located close to businesses, recreational facilities, community adult service providers, and public transportation so that participants can access these sites for learning. A location in the central business district in downtown Muskegon offers the best access to these sites. Access to learning sites in other parts of the community can be accomplished using MATS buses, taxis, and other transportation.

The instructor and two instructional assistants provide the necessary supervision and appropriate training to meet the individual learning needs of <u>no more than 15 students</u>. Due to these staffing levels, participants may travel within the community independently and engage in learning experiences without direct staff supervision.

Participants are transported in the morning (8:00- 8:15 AM) by local school districts, public transportation, or by the student's family to the transition center or to their individual work experience site. Generally a half-day is involved in work experience, individualized vocational training, or supported employment activities at businesses located in downtown Muskegon. The MAISD work-study coordinator, or one of the three instructional assistants supervised by him, facilitates these learning activities.

Learning experiences involving daily living skills, mobility, or recreation are then arranged around work activities. Participants utilize public transportation or contracted Pioneer Resources transportation to travel to community training sites. The instructor, or instructional assistant supervised by him/her, facilitates these activities. Lunches are usually prepared by the participants using items provided by Pioneer Resources or that are purchased from local grocery stores. Occasionally, the participants will eat lunch at a local restaurant. Participants leave the Transition Center between 2:30-2:45 PM on school buses, or other transportation.

The Adult Community Transition (ACT) Program focuses on each participant as an individual. Each person brings different skills and needs with them; therefore, the goals are unique for him or her. The participants have a lot of input into what they learn. Along with parents, guardians, community agencies, and program personnel, the students identify their transition outcomes.

Community Based
Transition Programs

Bay County- Hampton Square Mall- 1435 Center Road, Bay City, MI- Business Zoning

Berrien County- YWCA- 305 Lake Blvd. St. Joseph, MI- Business Zoning
Four Flags Hotel- 404 E. Main Street, Niles, MI –Business Zone

Eaton County- Downtown Charlotte- 240 S. Cochran, Charlotte, MI- Business Zoning

Inghan County- Lansing P. S. - Impressions Five Museum, Michigan Ave. Lansing, MI
Secondary Learning Center- 2630 W. Howell Rd., Mason, MI

Kalamazoo County- Downtown Kalamazoo- Young Adult Program- 422 S. South St
Kalamazoo, MI - Business Zoning

Kent County- Grand Rapids P.S.- (8 locations) Woodland Mall- Business Zoning
Rogers Plaza- Business Zoning
St. Mary's Hospital
GVSU- Eberhard Center
Non-profit agencies, Churches, etc.

Ottawa County- Grand Haven Centertown Area- 714 Columbus, G.H. –Business Zoning
Hudsonville- Central Business District- Business Zoning

Washtenaw County- Downtown Ann Arbor- Center for Community Independence-
400 W. Washington, Ann Arbor, MI Business Zoning
Downtown Dexter- Commercial Building- Business Zoning
Washtenaw Community College- Ann Arbor, MI

Transition Services Defined

The Individuals with Disabilities Education Act and the Rehabilitation Act Amendments defined transition services:

Transition services are a coordinated set of activities for a student, based on the individual student's needs and designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual student's needs, take into account the student's preferences and interests, and include instruction, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Withdrawn from agenda request of staff

Commission Meeting Date: January 8, 2002

Date: **December 27, 2001**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Amendments to IFT "Contract for Tax Abatement"**

SUMMARY OF REQUEST:

In October of 2001 it was requested by the Legislative Policy Committee that proposed changes in language be made to the IFT "Contract for Tax Abatement". The purpose of these changes would be to require companies to provide documentation to support any reduction in employment or investment after the issuance of an IFT by the City.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To amend the "Contract for Tax Abatement" to include those sections highlighted in the document.

COMMITTEE RECOMMENDATION:

<u>CITY OF MUSKEGON</u>

<u>CONTRACT FOR TAX ABATEMENT</u>
<u>Act 198 Public Acts of 1974</u>

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

<u>Recitals:</u>

A. The Company has applied to City for the establishment of an industrial development district or industrial rehabilitation district pursuant to the provisions of Act 198 of the Public Acts of 1974, as amended, which act requires a contract between the City and the Company to be agreed and submitted with the Company's subsequent anticipated application for an industrial facilities exemption certificate.

B. That in addition to the statutory requirement, the City has determined that it is in the best interests of the taxpayers, property owners and residents of the City that this Agreement be approved and executed prior to the establishment of the requested district, and the City deems this Contract, together with the conditions set forth in the said Act to constitute a necessary element in the City's determination whether or not to create the district.

C. The Company intends to install the project set forth in its application ("project") which it believes qualifies for the process of establishing the district and the application for industrial facilities exemption certificate.

D. The City, provided this Agreement is executed, will determine whether to create the district based upon the potential for the production of permanent jobs, the continuation, **stabilization** or increase of economic activity, planning and zoning considerations and the City's general plan and intentions regarding economic development. In addition to the City policy considerations and predictions that the Company's proposed district and certificate benefit the community in those ways, the City has further determined that the contractual commitments made by the Company to thereby assist the community shall be binding on the Company and necessary to continue the tax exemption made possible by the certificate.

E. This contract shall become effective upon the issuance of an Industrial Facilities Tax Exemption Certificate.

NOW THEREFORE THE PARTIES AGREE:

1. **<u>COMPANY AGREEMENT</u>**. The Company irrevocably commits to the investment, job retention and job creation promises made in its application, a copy of which is attached hereto and incorporated herein. In particular the Company agrees:

1.1 That ____________ percent of the promised new jobs shall be in place with full-time employees on or before ___________, 20_____, and ___________ percent of the said jobs shall be in place with full time employees on or before _______, 20____ Finally, 100% of the jobs shall be filled and in existence with full-time employees by a date no later than two (2) years from the date of the granting of the certificate by the State Tax Commission, **subject to the provisions of section 3.4 of this agreement.**

1.2 That the amount of jobs listed on the application, whether new or retained, will be maintained through the life of the abatement, **subject to the provisions of section 3.4 of this agreement.**

1.3 The Company shall meet the affirmative action goal included in the application or in any documents supplied by the City and utilized by the Company, including any additional representations made to the City Commission on or before the date two (2) years after the granting of the certificate by the State Tax Commission. It shall maintain the said levels of employment diversity during the period of the certificate, **subject to the provisions of section 3.4 of this agreement.**

1.4 The Company, by the end of two (2) years from the date of the grant of the certificate by the State Tax Commission shall have completed the investment of $_______ in the equipment and improvements as shown in the application, **subject to the provisions of section 3.4 of this agreement.**

1.5 That the improvements and equipment to receive the tax abatement treatment shall be completed on or before the date two (2) years from the date of granting of the certificate by the State Tax Commission.

1.6 The Company shall pay its specific taxes required by the act in a timely manner, and shall not delay payments so as to incur any penalties or interest.

1.7 The Company shall fully cooperate with the City representatives in supplying all requested and required documentation regarding jobs, investment, the meeting of all goals and the timely installation and utilization of equipment and improvements. The City shall be entitled to inspect at reasonable hours the Company's premises where the said improvements and equipment have been installed and where the said jobs are performed.

1.8 The Company shall maintain, during the entire period for which the tax abatement is granted, the level of jobs, affirmative action goals, production and utilization of the improvements and equipment at the site where the district has been created and for which the tax exemption has been granted.

1.9 The Company shall not cause or fail to cure the release of any hazardous substance, or the violation of any environmental law on its premises in the City. It shall report any releases to the appropriate governmental authority in a timely and complete manner, and provide copies of said report documentation to the City. It shall comply with all orders and actions of any governmental agency having authority.

1.10 The Company shall maintain the equipment and improvements so as to minimize physical or functional obsolescence.

1.11 The Company shall continue to operate its business location in the City, containing the same number of and type of jobs, for the term of the certificate.

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

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

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

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

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

3.4 The failure to create or retain jobs, meet affirmative action goals or expend the funds on equipment and improvements as represented in the application within the times required hereby, **unless the company can show that there has been a loss of revenue and employment due to circumstances beyond the control of the company. In order to make that showing the company shall have the burden of supplying, to the City's satisfaction, complete and**

convincing documentation supporting and justifying reductions in investment, failures to attain affirmative action goals or job losses, such as, without limitation, written evidence of lost contracts, accounting information showing reduced revenues due to the loss of business, (not due to diversion of production to affiliate companies or divisions of the company), production records showing reduced quantities over significant periods of time, and such other information required by the City to support the Company's claim that the failure to invest, failure to achieve affirmative action goals, or loss of jobs should not form the basis for a finding of default.

3.5 The bankruptcy or insolvency of the Company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF MUSKEGON

By____________________________
Steve J. Warmington, Mayor

and____________________________
Gail A. Kundinger, Clerk

By____________________________

Its________________________

and____________________________

Its________________________

Commission Meeting Date: January 8, 2002

Table

Date:	**January 2, 2002**
To:	**Honorable Mayor & City Commission**
From:	**Planning & Economic Development Department** CBC
RE:	**Extension of Construction Time Period- Purchase Agreement/Former Lakos Property (Muskegon Hospitality, Inc./City of Muskegon)**

SUMMARY OF REQUEST: To approve the written request from Holiday Inn Muskegon Harbor/Muskegon Hospitality Inc. to extend the construction time period designated in the Purchase Agreement between Muskegon Hospitality, Inc. and the City of Muskegon for the former Lakos property, with conditions. Although the extension request is for 24 months, staff recommends that the request be granted for 12-months, in accordance with Section (9) of the Purchase Agreement (through September 2002).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request from Muskegon Hospitality, Inc. for an extension for completion of construction, for a period of 12 months, provided that the following conditions be met: 1) a timeline for building construction and future use be provided to the City by February 1, 2002, 2) the property be filled with 3" of topsoil and the property be seeded by May 31, 2002, 3) the existing fence be moved from it's current location to the rear of the property so that it screens the rear delivery and dumpster area by May 31, 2002. Further, the buyer must sign an addendum to the Land Contract and Purchase Agreement agreeing to these terms.

COMMITTEE RECOMMENDATION: None.

Commission Meeting Date: January 8, 2002

Date: **January 2, 2002**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department** CBC

RE: **Terrace Lots/Extension of Real Estate Purchase Agreement**

SUMMARY OF REQUEST: The Westwood Group L.L.C. and the City of Muskegon entered into a "Real Estate Purchase Agreement" for the Terrace Lots on October 12, 2000. The Westwood Group has requested that the Agreement be extended. The Commission is requested to approve the attached "First Amendment to Real Estate Sale Contract" between The Westwood Group, L.L.C. and the City of Muskegon.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached "First Amendment to Real Estate Sale Contract" and authorize the Mayor and Clerk to sign.

COMMITTEE RECOMMENDATION: None.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is made October 12, 2000 (effective date), by and between the **CITY OF MUSKEGON**, a municipal corporation, with offices at 933 Terrace Street, Muskegon, Michigan 49440 ("Seller"), and **THE WESTWOOD GROUP, L.L.C.**, of 900 Third Street, Suite 204, Muskegon, Michigan 49440 ("Buyer").

1. **General Agreement and Description of Premises.** Contingent upon successful acquisition of the land identified herein as "Parcel #1," Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, the real property located in the City of Muskegon, Muskegon County, Michigan ("Premises"), and specifically described as:

Parcel #1 and Parcel #2, as described in attached Exhibit A.

Subject to the reservations, restrictions and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law. Seller further reserves from the conveyance of Parcel #2 the land, if any, needed for the construction and right of way for Shoreline Drive.

The Premises consists of lands to be acquired from MAC I, the holder of a beneficial interest in the lands, together with lands previously reserved to Seller by agreement with MAC I, not to include the portion of the land known as the "Terrace Lots" condemned or acquired by Seller for the Shoreline Drive or the "Terrace Street entrance" to Shoreline Drive ("Parcel #1), and certain contiguous lands described on the exhibit (Parcel #2).

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises shall be determined by calculating the cost per square foot paid to acquire certain lands known as the Terrace Lots (less the lands reserved or condemned by Seller). Seller will endeavor to acquire the said unreserved and uncondemned lands and convey the lands so acquired and portions of the said reserved lands not needed for highway purposes to the Buyer at the price determined by calculating the square foot cost incurred for the acquired lands (Parcel #1), **provided** the purchase price to be paid by Buyer of the said lands shall not exceed Sixty Thousand Dollars ($60,000) per acre. The purchase price shall be payable in cash or certified funds to Seller at Closing. Upon successful acquisition of all the interest of MAC I in Parcel #1 and notice thereof from Seller, Buyer shall deposit with Seller the sum of One Thousand Dollars ($1,000) as earnest money, to be deducted from the purchase price due at Closing, or returned without interest in the event Buyer is entitled to its return for failure of Seller to close without cause or legal justification. The purchase price for the contiguous lands shall be Forty-six Thousand Five Hundred Dollars ($46,500) per acre, or pro rata for part of an acre, of Parcel #2 conveyed.

3. **<u>Taxes and Assessments</u>.** All taxes and assessments, if any, which are due and payable at the time of Closing shall be paid by Seller prior to or at Closing. All taxes and special assessments which become due and payable after Closing shall be the responsibility of Buyer.

4. **<u>Title Insurance</u>.** Seller agrees to deliver to Buyer's attorney, ten (10) days prior to Closing, a commitment for title insurance issued by Transnation Title Insurance Company for an amount not less than the purchase price stated in this Agreement, guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment are, in the sole discretion of Buyer, deemed unreasonable, Seller shall have forty-five (45) days from the date Seller is notified in writing of such unreasonableness of restriction and such unmarketability of title, to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale as herein provided, within ten (10) days of written notification thereof. If Seller fails to resolve such restrictions or remedy the title within the time above specified or fails to obtain satisfactory title insurance, this Agreement will be terminated at Buyer's option. The premium for the owners title policy shall be paid by Seller.

5. **<u>Survey</u>.** Buyer, at its own expense, may obtain a survey of the Premises, and Buyer or its surveyor or other agents may enter the Premises for that purpose prior to Closing. If no survey is obtained, Buyer agrees that Buyer is relying solely upon Buyer's own judgment as to the location, boundaries and area of the Premises and improvements thereon without regard to any representations that may have been made by Seller or any other person. In the event that a survey by a registered land surveyor made prior to Closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Agreement, and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

7. **<u>Environmental Matters</u>. Seller represents to Buyer that to the best of Seller's knowledge, the Premises have in the past been used and operated for industrial purposes and Seller is not in possession of any knowledge, except that supplied by others, concerning environmental contamination or the presence of underground storage tanks or facilities. This representation is made subject to any environmental studies or evidence which may be available, including, without limitation, filings with the City, any other governmental unit, or the State of Michigan or the United States, or evidence in the control of any person or party having knowledge of or interest (at any time) in the premises. Seller does not warrant that such laws or regulations have not been violated, or that releases have not occurred. Seller shall supply copies of any environmental studies which have been performed and which are possessed by Seller.**

The purchase price of the property has been negotiated by Seller and Purchaser to reflect the present condition and possible prior uses of the Property, as well as

Purchaser's acceptance of the conditions and obligations imposed hereby. Purchaser assumes no responsibility as to: (i) contamination of the Property or any of its components that occurred prior to the closing date; or; (ii) compliance with any laws or regulations, federal, state or local, dealing with the environment that solely affect said pre-closing contamination, except that Purchaser agrees to comply with due care requirements that may be required by statute or law.

8. **<u>Condition of Premises and Examination by Buyer</u>. NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES SHALL OPERATE BETWEEN SELLER AND BUYER, AND BUYER EXPRESSLY WAIVES ANY AND ALL SUCH IMPLIED WARRANTIES. BUYER UNDERSTANDS AND AGREES THAT THE PREMISES ARE TAKEN "AS IS." BUYER HAS PERSONALLY INSPECTED THE PREMISES AND IS SATISFIED WITH THE CONDITION OF THE LAND, INCLUDING ITS ENVIRONMENTAL CONDITION, AND UNDERSTANDS THAT THE PROPERTY IS BEING PURCHASED AS A RESULT OF SUCH INSPECTION AND INVESTIGATION AND NOT DUE TO ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SELLER.**

9. **<u>Real Estate Commission</u>.** Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

10. **Closing.** The Closing date of this sale shall occur on or before a date occurring within thirty (30) days after the date when construction of any substantial part of Shoreline Drive, the Trail, or the railroad along Shoreline Drive, commences (determined by the issuance to a contractor of a notice to proceed under a major construction contract), or on or before the date falling one (1) year from the effective date above, whichever date first occurs. The Closing shall be conducted at Transnation Title Insurance Company, Muskegon, Michigan. If necessary, the parties shall execute an IRS closing report at the Closing. In the event Buyer determines to close on Parcel #2 on an earlier date, and Parcel #1 has been acquired by Seller, Buyer may do so with at least ten (10) business days written notice to Seller.

11. **<u>Delivery of Deed</u>.** Seller shall execute and deliver a covenant deed to Buyer at Closing for the Premises.

12. **<u>Affidavit of Title</u>.** At the Closing, Seller shall deliver to Buyer an executed Affidavit of Title and a resolution of the City Commission authorizing the transaction and the conveyance.

13. **Date of Possession.** Possession of Premises is to be delivered to Buyer by Seller on the date of Closing.

14. **Costs.** Seller shall be responsible to pay all transfer taxes in the amount required by law. Seller shall be responsible to pay for the recording of any instrument which must be recorded to clear title to the extent required by this Agreement. Buyer shall pay for the cost of recording the deed to be delivered at Closing.

15 **Zoning**. The property is zoned "B-2." No contingency for zoning approval is reserved by Buyer.

16. **Assignment by Buyer.** The Buyer may assign this Agreement to an affiliate or entity formed to hold title to the property, provided the Buyer named above shall remain, with the assignee, fully responsible for all performances and liabilities under this Agreement.

17. **General Provisions.**

a. **Paragraph Headings.** The paragraph headings are inserted in this Agreement only for convenience.

b. **Pronouns.** When applicable, pronouns and relative words shall be read as plural, feminine or neuter.

d. **Merger.** It is understood and agreed that all understandings and agreements previously made between Buyer and Seller are merged into this Agreement, which alone fully and completely expresses the agreement of the parties.

e. **Governing Law.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan.

f. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their successors and assigns.

g. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

h. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for herein shall survive the Closing and continue in full force and effect after the consummation of this purchase and sale and continue until all liabilities of Buyer have been fully satisfied.

i. **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by Seller and Buyer.

j. **Execution of this Agreement.** This Real Estate Purchase Agreement is executed by the City Manager on behalf of the Owner, with the understanding that the Agreement shall not become valid until execution by the Mayor and Clerk with the authority of the City Commission.

k. **Notices.** All notices under this Agreement shall be in writing and shall be delivered personally, by registered or certified mail, or by verified facsimile and followed by first class mail.

Signed by the City Manager this 12th day of October, 2000, pending approval and execution by the Mayor and Clerk of the City of Muskegon.

Bryon L. Mazade, City Manager

WITNESSES:

Mary Haara

G. Thomas Johnson

SELLER: CITY OF MUSKEGON

By Fred J. Nielsen

Fred J. Nielsen, Mayor

By Gail A. Kundinger

Gail A. Kundinger, Clerk

Date signed by Seller: Oct. 12, 2000

Mark A. Vanden Bosch

BUYER: THE WESTWOOD GROUP, L.L.C.

By Michael Bowen

Michael Bowen, Its Managing Member

Date signed by Buyer: 10/12, 2000

FIRST AMENDMENT TO REAL ESTATE SALE CONTRACT

2002-05(e)

THIS First Amendment to Real Estate Sale Contract ("Amendment") has been executed as of ______________, 2002 and effective as of ______________, 2002, by The City of Muskegon, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan ("Seller"), and The Westwood Group, L.L.C., of 900 Third Street, Suite 204, Muskegon, Michigan ("Buyer"), based upon the following facts:

A. On October 12, 2000 Seller and Buyer executed a Real Estate Purchase Agreement ("Agreement") for the sale and purchase of certain real estate located in the City of Muskegon and specifically identified in the attached Exhibits.

B. Seller and Buyer desire to amend the Agreement as provided below.

THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by both parties, Seller and Buyer agree:

1. **Closing.** The first sentence of Paragraph 10 is amended in its entirety to substitute the following language:

The closing date of this sale shall occur according to the following schedule:

Parcel #1 shall close on a date that is not later than February 28, 2002.

Parcel #2 shall close on a date that is not later than August 31, 2002.

2. **Ratification.** Except as expressly amended by this Agreement, Seller and Buyer ratify and confirm the Agreement in all respects.

3. **Counterparts.** This Amendment may be signed in more than one counterpart, which shall together constitute one and the same agreement.

(Remainder of Page intentionally left blank)

Buyer has signed this Amendment as of the date set forth above. Seller has signed by the City Manager as of the date set forth above, pending approval and execution by the Mayor and the Clerk of the City of Muskegon.

WITNESSES:

Mark A. VandenBosch
MARK A. VANDENBOSCH

BUYER:

The Westwood Group, L.L.C.
A Michigan limited liability company,

By: Michael J. Bowen
Michael J. Bowen
Its: Manager

SELLER:

Margaret M. Platt

Barbara A. Shullenberger

Joan Stone

Linda Potter

City of Muskegon
a Michigan municipal corporation,

By: Bryon T. Mazade
Bryon Mazade, City Manager

By: ____________________
Steve Warmington, Mayor

By: Gail A. Kundinger
Gail A. Kundinger, Clerk

Commission Meeting Date: January 8, 2002

Date:	**January 2, 2002**
To:	**Honorable Mayor & City Commission**
From:	**Planning & Economic Development Department** CBC
RE:	**Approval of Core Communities Funding (CCF) Program Agreement**

SUMMARY OF REQUEST: The City Commission approved the CCF loan, in the amount of $1 Million in 2001. These funds will be used on the Smartzone property for the seawall and boardwalk. In order to move forward on the expenditure of these funds, it is necessary to approve the attached agreement between the Michigan Economic Development Corporation and the City of Muskegon.

FINANCIAL IMPACT: The City will receive $1 Million in funds for the Smartzone site.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached "Core Communities Funding (CCF) Program CCF Agreement" and authorize the Mayor to sign.

COMMITTEE RECOMMENDATION: None.

Core Communities Funding (CCF) Program
CCF AGREEMENT
2002-05(f)

This CCF Agreement ("Agreement") is entered into as of this 8th day of January, 2002, between the Michigan Economic Development Corporation, a public body corporate, with offices at 300 N. Washington Square, Lansing, Michigan 48913, ("MEDC"), and the City of Muskegon, a municipal Corporation, with offices at 933 Terrace Street, Muskegon, Michigan 49443-0530 ("City"). As used herein, the MEDC and the City are sometimes collectively referred to as the "Parties."

WHEREAS, on April 11, 2001, the MEDC designated as a SmartZone certain areas located within the City's jurisdiction (such areas called the "Muskegon Lakeshore SmartZone"); and

WHEREAS, the proposed Muskegon Lakeshore SmartZone is important to the State and the community.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

Article I - Purpose

1.1. The purpose of this Agreement is to assist the City in financing certain Muskegon Lakeshore SmartZone projects (collectively called "Project"), as more specifically identified in the City's related funding application dated October 16, 2000.

Article II - Funding

2.1. The MEDC hereby commits one million dollars ($1,000,000.00) ("CCF Grant") towards the Project. The Parties acknowledge that such amount is CCF funds which have been appropriated under Public Act 291 of 2000 to the MEDC, and which the MEDC administers to qualifying communities and certified technology parks for qualifying projects, and that such funds are subject to applicable state and federal laws, rules, and policies. The CCF Grant is contingent upon: (a) The MEDC's continued receipt of CCF funds; and (b) the fulfillment of the conditions set forth, below, at Article III of this Agreement.

Article III - Conditions

3.1. The City must meet all SmartZone program requirements, as set forth by the MEDC and in Public Act 281 of 1986, as amended, being MCL 125.2151 et seq. ("Act"), including, but not limited to: Executing the Muskegon Lakeshore SmartZone Agreement with the MEDC, the City's Local Development Finance Authority ("LDFA"), and Grand Valley State University.

3.2. The City must meet all CCF program requirements, and sign the MEDC's CCF addendum ("Addendum") to this Agreement no later than August 1, 2002. No CCF Grant funds shall be disbursed before the City's signature of the Addendum.

Article IV - Miscellaneous

4.1. At its discretion and at any time, the MEDC may terminate this Agreement if any of the conditions set forth herein are not met. In such an event, the MEDC shall notify the City of the termination.

4.2. The relationship between the MEDC and the City is that of independent contractors. Neither of the Parties nor their respective agents and employers shall, under any circumstances, be deemed to be agents, representatives, partners or joint venturers of the other party and neither of the parties shall enter into any contract or commitment in the nature or on behalf of the other party.

4.3. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the entire agreement.

4.4. The City may not assign this Agreement or any interest herein without the MEDC's express prior written consent and approval.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written, or with such other authorization(s), if any, obtained prior to the City's signature of the Addendum.

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

WITNESSES

BY: ______________________

Doug Rothwell

ITS: President and Chief Executive Officer

____

CITY OF MUSKEGON

BY: ______________________

Steve Warmington

ITS: Mayor

Gail A. Kundinger

Gail A. Kundinger