

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 26, 2010

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Liquor License Request – Michigan Commerce Bank. CITY CLERK
 - C. Amendments to the Zoning Ordinance – Modify Parking Restrictions.
PLANNING & ECONOMIC DEVELOPMENT
 - D. Donation Program for 2010 Individual Income Tax Returns. INCOME TAX
 - E. DDA Bond Refunding. FINANCE
 - F. City – MDOT Agreement for Traffic Signals Upgrade to Box Span Along Laketon at Hoyt, Getty and Roberts. ENGINEERING
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
 - A. eTax Withholding Software. INCOME TAX
 - B. 2010 National League of Cities Membership Dues. CITY CLERK
 - C. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: PUBLIC SAFETY

753 Oak Avenue
1554 Pine Street (Area 11)

❑ **ANY OTHER BUSINESS:**

❑ **PUBLIC PARTICIPATION:**

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

❑ **CLOSED SESSION:**

❑ **ADJOURNMENT:**

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

Date: October 26, 2010
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the October 11th Commission Worksession Meeting and the October 12th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

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

MINUTES

2010-86

Present: Commissioners Warmington, Vice Mayor Gawron, Carter, Spataro, Wierengo, Shepherd (arrived 5:33 p.m.), and Wisneski.

Absent: None.

Sewer Back-Up Claim.

On July 7, 2010 the business at 1190 Apple Avenue owned by Lawrence Baker experienced a sewer backup. It was determined the City sewer main was backed-up with grease causing the back-up at the Apple address. The MMRMA has reached an agreement with the property owner for clean-up and lost contents at \$11,000. This settlement must be approved by the City Commission because of the dollar amount.

Motion by Commissioner Carter, second by Commissioner Wierengo to authorize the sewer back-up claim for 1190 Apple Avenue in the amount of \$11,000.

ROLL CALL VOTE:

Ayes: Gawron, Spataro, Warmington, Wierengo, Wisneski, and Carter.

Nays: None.

Abstain: Shepherd.

MOTION PASSES

Wastewater Presentation.

Scott Huebler and Jerry Bartoszek made a presentation of the proposed Wastewater contract. It is a twenty year agreement. The City Commission will consider the contract at a future Commission meeting.

Harbor Towne Streets.

Representatives of Harbor Towne provided a power point presentation of streets needing repair within the site. They are asking the City Commission for some type of support in making the needed repairs. The City Commission listened to the concerns and will take it under advisement.

East Muskegon Little League Request.

The East Muskegon Little League would like to build a physically disabled accessible wheelchair friendly, t-ball diamond on the north east corner of Sheldon Park. This would require the

removal of approximately twenty-five trees. The Commission stated its approval of the project but recommended that the group speak to neighborhood association for their opinion as well.

Any Other Business

Emergency Sewer Line Replacement

Approximately fifteen to twenty feet of sewer line at Wood and Dale need emergency repair. Bids were solicited and McCormick was the lowest responsible bidder with a bid of \$33,700.

Motion by Commissioner Spataro, seconded by Commissioner Carter to approve the bid from McCormick in the amount of \$33,700 for the emergency sewer repair at Wood and Dale.

MOTION PASSES

Adjournment.

Motion by Commissioner Carter, seconded by Commissioner Shepherd to adjourn at 6:45 p.m.

MOTION PASSES

**Ann Marie Becker, MMC
City Clerk**

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 12, 2010

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

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

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

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

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

2010-87 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the City Commission Meeting that was held on Tuesday, September 28, 2010.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Homeless Continuum of Care Network and City of Muskegon - Memorandum of Understanding (MOU) and Appointment of City Commission Representative. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City of Muskegon has had a voting seat on the Homeless Continuum of Care Network Review Committee for several years. The current MOU is outdated. In order to retain the City seat on the Review Committee, a new MOU must be approved. Commissioner Larry Spataro has served as the City representative in the past.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the MOU and authorize the Mayor's signature and appoint Commissioner Spataro as the City of Muskegon representative to the Review Committee.

C. CDBG Program Administration Agreement – City of Muskegon/City of Norton Shores. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City of Muskegon has contracted with the City of Norton Shores to administer their Community Development Block Grant (CDBG) program since 2006. The Agreement to administer the program was renewed in 2008 and extended to June 30, 2009. However, although the City of Muskegon has continued to administer the Norton Shores CDBG program, the Agreement has not been renewed since that time. Therefore, the Agreement is effective July 1, 2009, and extends through June 30, 2011.

FINANCIAL IMPACT: The City of Norton Shores pays \$22,000 a year to the City of Muskegon to administer their CDBG program.

BUDGET ACTION REQUIRED: None.

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

D. West Michigan Metropolitan Transportation Plan (WestPlan) Dues, FY 2011. CITY MANAGER

SUMMARY OF REQUEST: To approve remittance of the City of Muskegon's portion of the WestPlan dues for Fiscal Year 2011, payable to West Michigan Shoreline Regional Development Commission. This agency determines projects and distributes federal transportation funds.

FINANCIAL IMPACT: \$16,040.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve this request.

E. Amend Article III of Chapter 74 of the City's Code of Ordinance. ENGINEERING

SUMMARY OF REQUEST: Adopt the proposed amendments to Sections 74-84, 85, and 86 of Chapter 74, Article III of the City's Code of Ordinances providing one more option to enforce the repairs and collection of hazardous sidewalks by billing the owner(s) without creating a special assessment district. This proposed alternative, as outlined in Section 74-86, will help the City deal with hazardous sidewalks after issuing a notice to the owner and subsequently make the repairs, thus preventing costly claims.

FINANCIAL IMPACT: None at this time since the assumption is that the owner of record will be billed for the actual cost. However, the possibility is there that the owner(s) may default.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the proposed amendments to articles 74-84, 85, and 86 of Chapter 74 of the City's Code of Ordinance.

F. Budgeted Vehicle Replacement – Chevrolet Impalas. PUBLIC WORKS

SUMMARY OF REQUEST: Approval to purchase two 2011 Chevrolet Impalas from Don Rypma Chevrolet.

FINANCIAL IMPACT: \$36,920.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the purchase.

G. Budgeted Equipment Setup. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to purchase five service bodies from Arista Truck Systems and one plow from Hoekstra Equipment.

FINANCIAL IMPACT: \$30,920.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the purchases.

H. Merit Network Inc. – METRO Act Permit. ENGINEERING

SUMMARY OF REQUEST: Approve the permit from Merit Network to install aerial fiber optic facilities within the City's right of way and authorize the Mayor and Clerk to sign said permit.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the permit and sign document.

I. Removal of Zoning Board of Appeals Member and Appointments to Various Boards. CITY CLERK

SUMMARY OF REQUEST: To remove Eleanor Fife from the Zoning Board of Appeals, appoint John Derbin to the Board of Review, and appoint Tammy Halterman to the Zoning Board of Appeals.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

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

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the Consent Agenda as read.

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

Nays: None

MOTION PASSES

2010-88 NEW BUSINESS:

A. Richards Park License and Management Agreement. PUBLIC WORKS

SUMMARY OF REQUEST: To approve an agreement with the Muskegon Conservation District to locate their main office on a portion of the Richards Park property.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

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

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the Richards Park License and Management Agreement.

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

Nays: None

MOTION PASSES

B. Consideration of 2011 COLA for Retirees. FINANCE

SUMMARY OF REQUEST: It is time to consider whether an annual cost of living adjustment (COLA) should be awarded to City retirees. Under the City's COLA program, permanent cost of living increases are made to pensioners retired five years or more. COLA payments are capped at 75% of the CPI and are payable only when investment performance exceeds estimates and the COLA is deemed affordable. The last COLA was in 2009, when a 0.50% COLA was granted.

The collapse of the financial markets in late 2008 continues to take a big toll on the City's pension funds as noted in the most recent actuarial valuation:

"If the December 31, 2009 valuation results were based on market value on that date instead of 10-year smoothed funding value: i) the funded percent of your entire municipality would be 79% (instead of 99%); and ii) your total employer contribution requirement for the fiscal year starting July 1, 2011 would be \$4,165,166 (instead of \$1,152,252). If the investment markets do not fully make up for the 2008 losses, employer contribution requirements can be expected to rise. MERS continues to do everything it can to make sure that if this proves to be the case, the increases are

incremental as opposed to steep.”

Given the unprecedented economic and investment environment we are in and the severe market losses suffered by the City’s pension funds, staff recommends no retiree COLA be awarded for the year beginning January 1, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Commission action affirming staff’s recommendation that no COLA increase be granted to City retirees in 2011.

Motion by Vice Mayor Gawron, second by Commissioner Carter to affirm staff’s recommendation that no COLA increase be granted to City retirees in 2011.

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

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:07 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

Date: October 26, 2010
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Liquor License Request
Michigan Commerce Bank

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request to transfer all rights to renewal of an escrowed 2009 Class C Licensed Business with Dance-Entertainment Permit, located at 677 W. Laketon, Muskegon, from Cuti's Sports Bar and Grill, Inc. to Michigan Commerce Bank, with licenses to be held in Escrow.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.



Michigan Department of Energy, Labor & Economic Growth
MICHIGAN LIQUOR CONTROL COMMISSION (MLCC)
7150 Harris Drive, P.O. Box 30005
Lansing, Michigan 48909-7505

FOR MLCC USE ONLY

Request ID # 563952

Business ID # 224301

LOCAL APPROVAL NOTICE

[Authorized by MCL 436.1501]

SEPTEMBER 9, 2010

TO: MUSKEGON COUNTY COMMISSION
ATTN: CLERK
933 TERRACE STREET
PO BOX 536
MUSKEGON, MI 49443-0536

APPLICANT: MICHIGAN COMMERCE BANK

Home Address and Telephone No. or Contact Address and Telephone No.:

MICHIGAN COMMERCE BANK, c/o JOHN SMYTHE, 200 WASHINGTON SQUARE NORTH, LANSING, MI 48933,
B(517) 487-6555, john.smythe@capitolbancorp.com

The MLCC cannot consider the approval of an application for a new or transfer of an on-premises license without the approval of the local legislative body pursuant to the provisions of MCL 436.1501 of the Liquor Control Code of 1998. For your information, local legislative body approval is also required for DANCE, ENTERTAINMENT, DANCE-ENTERTAINMENT AND TOPLESS ACTIVITY PERMITS AND FOR OFFICIAL PERMITS FOR EXTENDED HOURS FOR DANCE AND/OR ENTERTAINMENT pursuant to the provisions of MCL 436.1916 of the Liquor Control Code of 1998.

For your convenience a resolution form is enclosed that includes a description of the licensing application requiring consideration of the local legislative body. The clerk should complete the resolution certifying that your decision of approval or disapproval of the application was made at an official meeting. **Please return the completed resolution to the MLCC as soon as possible.**

If you have any questions, please contact Unit 3 of the Retail Licensing Division at (517) 636-0204.

**PLEASE COMPLETE ENCLOSED RESOLUTION AND RETURN
TO THE LIQUOR CONTROL COMMISSION AT ABOVE ADDRESS**

RESOLUTION

At a _____ meeting of the _____
(Regular or Special) (Township Board, City or Village Council)

called to order by _____ on _____ at _____ P.M.

The following resolution was offered:

Moved by _____ and supported by _____

That the request to TRANSFER ALL RIGHTS TO RENEWAL OF AN ESCROWED 2009 CLASS C LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT, LOCATED AT 677 W LAKETON, MUSKEGON, MI 48441, MUSKEGON COUNTY FROM CUTI'S SPORTS BAR AND GRILL, INC. TO MICHIGAN COMMERCE BANK, WITH LICENSES TO BE HELD IN ESCROW.

be considered for _____
(Approval or Disapproval)

APPROVAL

DISAPPROVAL

Yeas: _____

Yeas: _____

Nays: _____

Nays: _____

Absent: _____

Absent: _____

It is the consensus of this legislative body that the application be:

_____ for issuance
(Recommended or Not Recommended)

State of Michigan _____)

County of _____)

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the _____ at a _____
(Township Board, City or Village Council) (Regular or Special)

meeting held on _____
(Date)

(Signed) _____
(Township, City or Village Clerk)

SEAL

(Mailing address of Township, City or Village)

Commission Meeting Date: October 26, 2010

Date: October 19, 2010
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendments to the Zoning Ordinance

SUMMARY OF REQUEST:

Staff initiated request to amend Section 2326 (Off-Street Parking and Loading) of Article XXIII (General Provisions) to modify parking restrictions in the downtown parking overlay district. The amendment would loosen the parking restrictions for small businesses that locate in to a previously existing building.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 10/14 meeting.

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

October 14, 2010

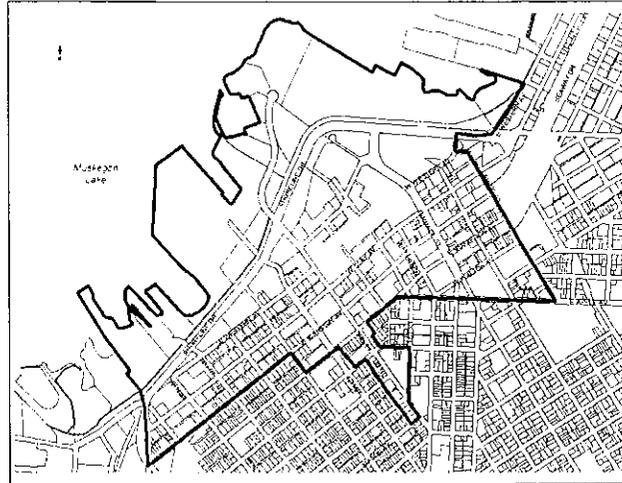
Hearing, Case 2010-36: Staff initiated request to amend Section 2326 (Off-Street Parking and Loading) of Article XXIII (General Provisions) to modify parking restrictions in the downtown parking overlay district.

BACKGROUND

1. There are currently several small vacant storefronts along W Western Ave and 3rd St that do not come with on-site parking. A change of use would require any potential business to provide the number of parking spaces required by Table IB (parking standards) of the zoning ordinance. (see attachment 4 – Table IB)
2. The only way this would be possible would be to get an irrevocable shared parking agreement with another property, within 1,000 feet, that has excess parking.
3. This is becoming more challenging with each irrevocable shared parking agreement that is being made. There will continue to be less available excess parking downtown as these agreements continue to be made.
4. Staff feels that these parking agreements should be saved for when large scale businesses have no other options for parking. Also, there are some instances where small store fronts are not located within 1,000 feet of anyone that can offer a shared parking agreement
5. Staff feels that smaller businesses that require less parking should be able to use on-street and city-owned parking lots to accommodate their parking requirements.

Zoning ordinance excerpt:

12. Downtown Parking Overlay District: *A downtown parking overlay district is hereby created as outlined in Figure 23-2. Within said overlay area is permitted the following: [amended 2/03] [amended 6/07]*
 - a. *In the downtown parking overlay district only, all land uses, except residential, may use on-street parking for up to thirty percent (30%) of their required parking area.*
 - b. *In the downtown parking overlay district, shared parking agreements are encouraged. Parking areas for other than single or two-family residential uses may be located up to 1,000 feet from the building they are intended to serve and may be provided in any zoning district except the R-1 district.*
 - c. *In the downtown parking overlay district only, the required number of residential parking spaces shall be 1.5 per dwelling unit.*



NEW LANGUAGE

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

Amendment to Section 2326 (Off-Street Parking and Loading) #12 (Downtown Parking Overlay District)

- d. **In the downtown parking overlay district only, new businesses that are required to provide 15 parking spaces or less may forgo the parking requirements if they are locating into a previously existing building. On-street parking and city-owned parking lots will be used to accommodate the parking requirements. However, any previously existing parking spaces included with the building space must remain in place and be used by that business.**



The red lines indicate the areas of Western and 3rd that would be most effected by the amendment. On street parking is offered on both sides of the street along a majority of this area. The red dots indicate the city-owned parking lot and the two most-used lots for shared parking agreements.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2326 of Article XXIII to modify the downtown parking overlay district.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

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

Amendment to Section 2326 (Off-Street Parking and Loading) #12 (Downtown Parking Overlay District)

- d. **In the downtown parking overlay district only, new businesses that are required to provide 15 parking spaces or less may forgo the parking requirements if they are locating into a previously existing building. On-street parking and city-owned parking lots will be used to accommodate the parking requirements. However, any previously existing parking spaces included with the building space must remain in place and be used by that business.**

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Marie Becker, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 26th day of October, 2010, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2008, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2010.

Ann Marie Becker, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on October 26, 2010, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1306 of Article XIV to allow Transitional Living Centers as a special use permitted in B-5, Governmental Service Districts. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

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

Published _____, 2010.

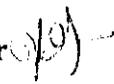
CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

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

Account No. 101-80400-5354

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: HONORABLE MAYOR AND CITY COMMISSIONERS
FROM: Kenneth D. Grant, Income Tax Administrator 
DATE: October 19, 2010
RE: Donation program for 2010 Individual Income Tax Returns

SUMMARY OF REQUEST:

Approval of multiple donations programs for the 2010 income tax returns. Every year our goal is to increase the number of refunds donated to our designated programs. Last year, 463 taxpayers donated their refunds to our donation programs for a grand total of \$2,386.00.

For the 2010 the three donation programs are Lakeshore Trail Improvements, Muskegon Recreational Center, & the Downtown Main Street.

FINANCIAL IMPACT:

The average amount collected each year is \$2,000.00. Each donated refund saves the city approximately \$1.25 in checks fees and postage.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval recommended

COMMITTEE RECOMMENDATION:

Date: October 26, 2010

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: DDA Bond Refunding

SUMMARY OF REQUEST: Historically low interest rates make it possible to refund the remaining bonds outstanding from the 1990 Mall redevelopment effort. The original bonds were restructured and refunded in 2001 at significant savings to the DDA/City. Because the City pledges its limited full faith and credit taxing power to repayment of the bonds, both the City and the DDA must take action.

Interest rates are very favorable and a recent analysis shows that these bonds can be refunded a second time with projected present value savings of \$102,858 (after issuance costs). This equates to 5.13% of the outstanding principal. A general rule of thumb is that PV savings should equal at least 2% of bond principal in order to proceed with a refunding.

FINANCIAL IMPACT: Present value savings of \$102,858 (after issuance costs). Attached is a formal analysis of the proposed bond refunding.

BUDGET ACTION REQUIRED: None at this time. Interest savings will be reflected in future years' DDA budgets.

STAFF RECOMMENDATION: Adoption of the attached bond authorizing resolution.

COMMITTEE RECOMMENDATION: None.

City of Muskegon, Michigan
2010 Downtown Development Refunding Bonds (GOLT)
Dated: December 22, 2010
Refunding of 2001 DDA Bonds

Debt Service Comparison

Part 1 of 2

Date	Total P+I	Existing D/S	Net New D/S	Old Net D/S	Savings	Fiscal Total
12/22/2010	-	-	-	-	-	-
06/01/2011	58,781.88	245,220.00	304,001.88	293,038.75	(10,963.13)	-
12/01/2011	21,042.50	-	21,042.50	47,818.75	26,776.25	-
12/31/2011	-	-	-	-	-	15,813.12
06/01/2012	301,042.50	-	301,042.50	292,818.75	(8,223.75)	-
12/01/2012	19,292.50	-	19,292.50	42,367.50	23,075.00	-
12/31/2012	-	-	-	-	-	14,851.25
06/01/2013	309,292.50	-	309,292.50	302,367.50	(6,925.00)	-
12/01/2013	17,190.00	-	17,190.00	36,452.50	19,262.50	-
12/31/2013	-	-	-	-	-	12,337.50
06/01/2014	307,190.00	-	307,190.00	306,452.50	(737.50)	-
12/01/2014	14,725.00	-	14,725.00	30,175.00	15,450.00	-
12/31/2014	-	-	-	-	-	14,712.50
06/01/2015	309,725.00	-	309,725.00	310,175.00	450.00	-
12/01/2015	11,775.00	-	11,775.00	23,525.00	11,750.00	-
12/31/2015	-	-	-	-	-	12,200.00
06/01/2016	316,775.00	-	316,775.00	323,525.00	6,750.00	-
12/01/2016	8,343.75	-	8,343.75	16,250.00	7,906.25	-
12/31/2016	-	-	-	-	-	14,656.25
06/01/2017	318,343.75	-	318,343.75	331,250.00	12,906.25	-
12/01/2017	4,468.75	-	4,468.75	8,375.00	3,906.25	-
12/31/2017	-	-	-	-	-	16,812.50
06/01/2018	329,468.75	-	329,468.75	343,375.00	13,906.25	-
12/31/2018	-	-	-	-	-	13,906.25
Total	\$2,347,456.88	\$245,220.00	\$2,592,676.88	\$2,707,966.25	\$115,289.37	-

City of Muskegon, Michigan
2010 Downtown Development Refunding Bonds (GOLT)
Dated: December 22, 2010
Refunding of 2001 DDA Bonds

Debt Service Comparison

Part 2 of 2

PV Analysis Summary (Net to Net)

Gross PV Debt Service Savings.....	100,598.29
Net PV Cashflow Savings @ 3.158%(AIC).....	100,598.29
Contingency or Rounding Amount.....	2,259.31
Net Present Value Benefit.....	\$102,857.60
Net PV Benefit / \$2,005,000 Refunded Principal.....	5.130%
Net PV Benefit / \$2,135,000 Refunding Principal.....	4.818%

Refunding Bond Information

Refunding Dated Date.....	12/22/2010
Refunding Delivery Date.....	12/22/2010

10/19/2010 | 1:54 PM

Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

PATRICK F. MCGOW
TEL (313) 496-7684
FAX (313) 496-8450
E-MAIL mcgow@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
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www.millercanfield.com

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October 20, 2010

Via Email and U.S. Mail

Mr. Timothy J. Paul
Finance Director
City of Muskegon
933 Terrace Street
P.O. Box 536
Muskegon, MI 49443-0536

Re: City of Muskegon, County of Muskegon, State of Michigan
2010 Downtown Development Refunding Bonds (LTGO)

Dear Tim:

As we discussed, I have enclosed a Resolution Authorizing 2010 Downtown Development Refunding Bonds (Limited Tax General Obligation) for consideration for approval by the City Council at its meeting on Tuesday, October 26th relating to the proposed refunding bond issue which is being considered for the purpose of achieving interest cost savings for the City.

The enclosed Resolution authorizes the issuance of Bonds in an amount not to exceed \$2,300,000 (the "Refunding Bonds") to refund the City's outstanding 2001 Downtown Development Refunding Bonds which were issued to refund the DDA's 1989 Downtown Development Limited Obligation Tax Increment Bonds, Series A-1 and D-1.

The Resolution is based on the bond specifications prepared by Robert W. Baird & Co, and sets forth the terms of the Bonds, the form of Bonds, and provides for a negotiated sale of the Bonds to Robert W. Baird & Co. (the "Underwriter"). The Resolution also authorizes various City officials to take the necessary actions to issue, sell and deliver the Bonds. As is the case with past bond resolutions, the Resolution authorizes the City Manager, Clerk, Treasurer and/or Finance Director to award and finalize the terms of the Bonds upon sale and execute the Bond Purchase Agreement with the Underwriter. This Resolution is the only action item required by the City Council relating to the Refunding Bonds. The Authorized Officers are authorized to proceed with

Mr. Timothy Paul

-2-

October 20, 2010

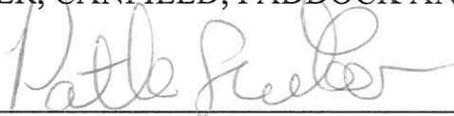
the sale of the Refunding Bonds so long as the City achieves net present value savings through the refunding. The City can only issue the Bonds if it results in net savings to the City.

I have also enclosed a Resolution Requesting Issuance of 2010 Downtown Development Refunding Bonds (LTGO) and Pledging Tax Increment Revenues to be considered for approval by the DDA Board. This DDA Resolution can be adopted before or after the City Council meeting. In order to complete the DDA Resolution you will need to attach or insert the estimated tax increment revenues of the DDA for the years 2011 – 2018, which are the remaining years on the Bonds.

If you or anyone copied on this letter have any questions, please give me a call.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: 

Patrick F. McGow

Enclosures

Cc: (w/encl.):
Bryon Mazade
Elizabeth Lewis
Warren M. Creamer, III
Michael McCarty
Steven Mann, Esq.

DISCLOSURE UNDER TREASURY CIRCULAR 230: The United States Federal tax advice contained in this document and its attachments, if any, may not be used or referred to in the promoting, marketing or recommending of any entity, investment plan or arrangement, nor is such advice intended or written to be used, and may not be used, by a taxpayer for the purpose of avoiding Federal tax penalties. Advice that complies with Treasury Circular 230's "covered opinion" requirements (and thus, may be relied on to avoid tax penalties) may be obtained by contacting the author of this document.

City of Muskegon
County of Muskegon, State of Michigan

RESOLUTION AUTHORIZING
2010 DOWNTOWN DEVELOPMENT REFUNDING BONDS
(LIMITED TAX GENERAL OBLIGATION)

Minutes of a regular meeting of the City Council of the City of Muskegon, County of Muskegon, Michigan, held in the City Hall, on the 26th day of October, 2010 at 5:30 o'clock p.m., Eastern Daylight Time.

PRESENT: Members: _____

ABSENT: Members: _____

The following preamble and resolution were offered by Member _____ and supported by Member _____.

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), pursuant to the provisions of Act 197, Public Acts of Michigan, 1975, as amended ("Act 197"), has previously issued its 2001 Downtown Development Refunding Bonds (General Obligation Limited Tax), dated September 1, 2001 (the "Prior Bonds"); and

WHEREAS, the Prior Bonds were issued in anticipation of the collection of certain tax increment revenues (the "Tax Increment Revenues") from the Downtown Development Authority of the City of Muskegon (the "DDA") for the purpose of paying the costs of refunding the DDA's 1989 Downtown Development Limited Obligation Tax Increment Bonds, Series A-1 and Series D-1; and

WHEREAS, the City and DDA have been advised that it may be able to accomplish a net savings of debt service costs by refunding all or a portion of the outstanding Prior Bonds through the issuance of the City's 2010 Downtown Development Refunding Bonds (Limited Tax General Obligation) (the "Refunding Bonds"); and

WHEREAS, the DDA has requested the City to issue the Refunding Bonds to achieve debt service savings and the DDA has pledged its tax increment revenues for payment of the Refunding Bonds; and

WHEREAS, the City has received a proposal from Robert W. Baird & Co. Incorporated (the "Underwriter") to purchase the Bonds pursuant to a negotiated sale.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Bonds; Bond Details. Bonds of the City shall be issued in the aggregate principal amount of not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000), as finally determined upon sale thereof, to be designated 2010 DOWNTOWN DEVELOPMENT REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION) (the "Bonds"), for the purpose of

paying the cost of refunding all or a portion of the Prior Bonds and issuance costs of the Bonds.

The Bonds shall consist of bonds registered as to principal and interest of the denomination of \$5,000 or multiples of \$5,000 not exceeding for each maturity the aggregate principal amount of such maturity, dated as of December 1, 2010, or such other date as determined by the City Manager, City Clerk, City Treasurer and Finance Director (the "Authorized Officers"), numbered as determined by the Transfer Agent (hereinafter defined), and maturing or subject to mandatory redemption on June 1st in the years 2011 to 2018, inclusive, or such other dates and/or years as shall be determined at the time of sale and in the amounts as determined by the Authorized Officers. The Bonds shall bear interest at a rate or rates to be determined at the time of sale thereof, but in any event not exceeding 6% per annum, payable on June 1, 2011, and semi-annually thereafter on December 1st and June 1st of each year, or such other first and subsequent interest payment dates as determined by the Authorized Officers. Interest on the Bonds shall be payable by a bank or trust company qualified to act as bond registrar, paying agent and transfer agent for the Bonds and appointed by the Authorized Officers as transfer agent for the Bonds (the "Transfer Agent"), mailed to the registered owner of record at the registered address, as shown on the registration books of the City maintained by the Transfer Agent as of the fifteenth day of the month prior to the payment date for each interest payment. The date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Bonds shall be payable at the Transfer Agent upon presentation and surrender of the appropriate Bond. The Bonds shall be sold at a price not less than 98.0% of their par value. The Underwriter's discount shall not exceed 1.25% of the principal amount of the Bonds.

The Bonds shall not be subject to optional redemption prior to maturity.

The Bonds shall be issued in book entry only form through the Depository Trust Company in New York, New York ("DTC") and the Authorized Officers are authorized to execute such custodial or other agreements with DTC as may be necessary to accomplish the issuance of the Bonds in book entry only form and to make such change in the Bond Form within the parameters of this Resolution as may be required to accomplish the foregoing.

Unless waived by any registered owner of Bonds to be redeemed, official notice of redemption shall be given by the Transfer Agent on behalf of the City. Such notice shall be dated and shall contain at a minimum the following information: original issue date; maturity dates; interest rates; CUSIP numbers, if any; certificate numbers (and in the case of partial redemption) the called amounts of each certificate; the redemption date; the redemption price or premium; the place where Bonds called for redemption are to be surrendered for payment; and that interest on Bonds or portions thereof called for redemption shall cease to accrue from and after the redemption date.

In addition, further notice shall be given by the Transfer Agent in such manner as may be required or suggested by regulations or market practice at the applicable time, but no defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed herein.

2. Execution of Bonds. The Bonds shall be signed by the facsimile signatures of the Mayor and the City Clerk of the City and shall have the facsimile seal of the City printed on the Bonds. No Bond shall be valid until authenticated by an authorized representative of the Transfer Agent. The Bonds shall be delivered to the Transfer Agent for authentication and be delivered by it to the purchaser

in accordance with instructions from the City Treasurer of the City upon payment of the purchase price for the Bonds in accordance with the bid therefor when accepted. Executed blank certificates for registration and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the Transfer Agent for safekeeping.

3. Security for Bonds; Defeasance. The Bonds shall be issued in anticipation of and payable in the first instance from payments required to be made by the DDA of Tax Increment Revenues pursuant to the Downtown Development Plan and Tax Increment Finance Plan ("Tax Increment Revenue Payments"), which Tax Increment Revenue Payments are anticipated to be in amounts sufficient to pay principal of and interest on the Bonds and which are hereby pledged to the payment of the Bonds. In addition, the City hereby pledges its full faith and credit for the prompt payment of the Bonds. Should the Tax Increment Revenue Payments at any time be insufficient to pay principal of and interest on the Bonds as the same become due, then the City shall advance as a first budget obligation from any funds legally available therefor, or, if necessary, levy taxes upon all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay said principal and interest. The City shall be reimbursed for any such advance by the DDA from Tax Increment Revenues. The City Treasurer is authorized and directed to open a separate fund with a bank or trust company designated by the City Council to be known as the 2010 DOWNTOWN DEVELOPMENT REFUNDING BONDS DEBT RETIREMENT FUND (the "Debt Retirement Fund"), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Bonds as they mature. Into said fund there shall be placed the accrued interest, if any, received at the time of delivery of the Bonds. In addition, there shall be paid into said fund the Tax Increment Revenue Payments as received from the DDA each year until the amount on hand in the Debt Retirement Fund, together with any amounts on hand in the Debt Retirement Fund available for payment of current principal and interest on the Bonds, is equal to all payments of principal and interest coming due on the Bonds prior to the next collection of taxes.

The City reserves the right to issue additional bonds of equal standing and priority of lien with the Bonds as to the Tax Increment Revenues, subject to the limitations of Act 197.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay the principal of and interest on the Bonds when due, shall be deposited in trust, this Resolution shall be defeased and the owners of the Bonds shall have no further rights under this Resolution except to receive payment of the principal of and interest on the Bonds from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Bonds as provided herein.

4. Escrow Account; Escrow Agreement. There is hereby established with the Escrow Agent (hereinafter defined) a fund to be designated as CITY OF MUSKEGON 2010 ESCROW ACCOUNT (the "Escrow Account"). The Authorized Officers are authorized to appoint a bank or trust company qualified to act as escrow agent for the Escrow Account (the "Escrow Agent"). Certain of the proceeds of the Bonds and, if deemed necessary or advisable by the City, moneys on hand in the Debt Retirement Fund for the Prior Bonds, as set forth in the Sale Order, shall be deposited in the Escrow Account consisting of cash and investments in direct obligations of or obligations of the principal of and interest on which are unconditionally guaranteed by the United States of America or other obligations the principal of and interest on which are fully secured by the foregoing not redeemable at the option of the

City in amounts fully sufficient to pay the principal of and interest on the Prior Bonds to be refunded as set forth in the Sale Order (the "Refunded Bonds"). The Escrow Account shall be held by the Escrow Agent pursuant to an escrow agreement (the "Escrow Agreement") which shall irrevocably direct the Escrow Agent to take all necessary steps to pay the principal of and interest on the Refunded Bonds when due and upon redemption. The amounts held in the Escrow Account shall be such that the cash and investments and income received thereon will be sufficient without reinvestment to pay the principal of and interest on the Refunded Bonds when due and upon redemption as required by the Sale Order. Any proceeds of the Bonds in excess of the proceeds deposited in the Escrow Account or required to pay costs of issuance shall be used for any lawful purpose as specified in the Sale Order.

The Authorized Officers are authorized negotiate the terms of and execute and deliver the Escrow Agreement on behalf of the City.

5. Bond Form. The Bonds shall be in substantially the following form with such changes as may be required to conform to the final terms of the Bonds established by the Sale Order:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON

CITY OF MUSKEGON

2010 DOWNTOWN DEVELOPMENT REFUNDING BOND
(LIMITED TAX GENERAL OBLIGATION)

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	June 1, 20__	_____, 2010	

Registered Owner:

Principal Amount: _____ Dollars

The City of Muskegon, County of Muskegon, State of Michigan (the "City"), acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, in lawful money of the United States of America, on the Maturity Date specified above, unless prepaid prior thereto as hereinafter provided, with interest thereon (computed on the basis of a 360 day year consisting of twelve 30-day months) from the Date of Original Issue specified above or such later date to which interest has been paid, at the Interest Rate per annum specified above, payable on June 1, 2011 and semiannually thereafter. Principal of this bond is payable upon presentation and surrender of this bond at the corporate trust office of _____, _____, Michigan, or such other transfer agent as the City may hereafter designate (the "Transfer Agent") by notice mailed to the registered owner not less than sixty (60) days prior to an interest payment date. Interest on this bond is payable to the person or entity which is the registered owner of record as of the 15th day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent, by check or draft mailed by the Transfer Agent to the registered owner of record at the registered address.

Principal of and interest on this bond are payable in the first instance from Tax Increment Revenues (as defined by law) to be received by the City from the Downtown Development Authority of the City of Muskegon (the "Authority"). In addition, for prompt payment of this bond, both principal and interest, the full faith, credit and resources of the City are hereby irrevocably pledged. In case of insufficiency of the Tax Increment Revenues received by the Authority for the payment of the principal of and interest on this bond, the City is obligated to pay the same as a first budget obligation from its general funds or from any taxes which it may levy, subject to applicable constitutional, statutory and charter tax rate limitations.

This bond is one of a series of bonds aggregating the principal sum of \$_____, issued pursuant to Act 197, Public Acts of Michigan, 1975, as amended, Act 34, Public Acts of Michigan, 2001, as amended, and a resolution duly adopted by the City Council of the City for the purpose of paying all or part of the cost of refunding a prior bond issue of the City. The City and the Authority have reserved the right to issue additional bonds payable from Tax Increment Revenues to the extent permitted by law.

Bonds of this issue are not subject to redemption prior to maturity.

This bond is transferable only upon the registration books of the City kept by the Transfer Agent by the registered owner of record in person, or by the registered owner's attorney duly authorized in writing. Upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing and upon the payment of the charges, if any, prescribed in the resolution authorizing this bond, a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this bond. Neither the City nor the Transfer Agent shall be required to transfer or exchange this bond or portion of this bond either during the period of fifteen (15) days immediately preceding the date of the mailing of any notice of redemption or (except as to the unredeemed portion, if any, of this bond) after this bond or any portion of this bond has been selected for redemption.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this bond and the series of bonds of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this bond and the series of bonds of which this is one, does not exceed any constitutional, statutory or charter debt limitation.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City of Muskegon, County of Muskegon, State of Michigan, by its City Council, has caused this bond to be signed in the name of the City by the facsimile signatures of its Mayor and Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

City of Muskegon
County of Muskegon
State of Michigan

By: _____
Mayor

(SEAL)

Countersigned

By: _____
City Clerk

[FORM OF TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION]

Date of Registration:

Certificate of Authentication

This bond is one of the bonds described in the within-mentioned resolution.

_____,
_____, Michigan

Transfer Agent

By: _____

Authorized Signature

6. Negotiated Sale. The City Council has considered the option of selling the Bonds through a competitive sale and a negotiated sale, and, pursuant to the requirements of Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), hereby determines that a negotiated sale of the Bonds to the Underwriter will result in the most efficient and expeditious means of selling the Bonds and will result in the lowest interest cost to the City and hereby approves the Underwriter as the purchaser of the bonds.

7. Bond Purchase Agreement; Delegation to Authorized Officer; Sale Order. The Authorized Officers are each hereby authorized to negotiate the sale of the Bonds with the Underwriter, negotiate and execute a Bond Purchase Agreement, execute a Sale Order specifying the final terms of the Bonds and take all other necessary actions required to effectuate the sale, issuance and delivery of the Bonds within the parameters authorized in this resolution.

8. Adjustment of Bond Terms. The Authorized Officers are each hereby authorized to adjust the final bond details as set forth herein to the extent necessary or convenient to complete the sale of the Bonds and in pursuance of the forgoing is each authorized to exercise the authority and make the determinations pursuant to Sections 315(1)(d) of Act 34, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, date of issuance, interest payment dates, redemption rights and other matters within the parameters established by this resolution.

9. Tax Covenant; Qualified Tax Exempt Obligations. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on each issue of the Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditures and investment of Bond proceeds and moneys deemed to be Bond proceeds. The City hereby designates the Bonds as "qualified tax exempt obligations" for purposes of deduction of interest expense by financial institutions pursuant to the Code.

10. Continuing Disclosure Undertaking. The City covenants to enter into a continuing disclosure undertaking for the benefit of the holders and beneficial owners of the Bonds in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission, and the Authorized Officers are each hereby authorized to execute such undertaking prior to delivery of the Bonds.

11. Appointment of Bond Counsel. The appointment of the law firm of Miller, Canfield, Paddock and Stone, P.L.C. of Detroit, Michigan, as Bond Counsel for the Bonds is hereby confirmed, notwithstanding the periodic representation by Miller, Canfield, Paddock and Stone, P.L.C., in unrelated matters of the Underwriter and other parties and potential parties to the issuance of the Bonds. The fees and expenses of Miller, Canfield, Paddock and Stone, P.L.C., as Bond Counsel and other accumulated bond related fees and expenses shall be payable as a cost of issuance from proceeds of the Bonds or other available funds.

12. Authorization of Other Actions. The Authorized Officers are each authorized and directed to (a) approve the circulation of a preliminary official statement describing the Bonds and to deem the preliminary official statement "final" for purposes of Rule 15c2-12 of the SEC; (b) approve the circulation of a final official statement describing the Bonds and to execute the same on behalf of the

City; (c) solicit bids for and approve the purchase of a municipal bond insurance policy for the Bonds; and (d) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Bonds.

13. Conflict; Recision. All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

RESOLUTION DECLARED ADOPTED.

YEAS: _____

NAYS: _____

ABSTAIN: _____

City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on October 26, 2010, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

City Clerk

18,472,180.1\063684-00037

MILLER, CANFIELD, PADDOCK AND STONE, P.L.L.C.

Date: October 26, 2010
To: Honorable Mayor and City Commissioners
From: Engineering
RE: City – MDOT Agreement - traffic signals upgrade to Box Span along Laketon @ Hoyt, Getty & Roberts.

SUMMARY OF REQUEST:

To adopt the attached resolution and approve the contract with MDOT to upgrade four traffic signals along Laketon Ave. at Hoyt, Wood, Getty & Roberts and to authorize the mayor and clerk to sign said contract. The upgrade at the Wood street intersection consists of installing left turn movement detection. As for the other three intersections; convert the signals into Box Span which will make it easier for traffic to see and thus safer intersections.

FINANCIAL IMPACT:

The estimated cost of the project is \$275,400 of which MDOT's pays up to \$215,200 toward participating items of work and the remaining is the City's share.

BUDGET ACTION REQUIRED:

none.

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

RESOLUTION _____

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE TRAFFIC SIGNAL UPGRADE ALONG LAKETON AVE. AT THE INTERSECTIONS OF HOYT, WOOD, GETTY & ROBERTS TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK ANN BECKER TO EXECUTE SAID CONTRACT

Moved by _____ and supported by _____

Commissioner _____ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **10-5650** between the Michigan Department of Transportation and the City of Muskegon for the **Traffic signal upgrade along Laketon Ave. at Hoyt, Wood, Getty & Roberts** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **10-5650** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this _____ day of _____, 2010.

BY

Stephen J. Warmington, Mayor

ATTEST

Ann Becker, City Clerk

CERTIFICATION

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

CITY OF MUSKEGON

By _____
Ann Becker, City Clerk

STP

DAB

Control Section	STH 61609
Job Number	108641
Project	STP 1061(348)
Federal Item No.	RR 7391
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	10-5650

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated September 13, 2010, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION

Traffic signal upgrading work along Laketon Avenue at the intersection of Hoyt Street, at the intersection of Wood Street, at the intersection of Getty Street, and at the intersection of Roberts Street; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION

Video traffic detection camera work at the intersection of Laketon Avenue and Wood Street; and all together with necessary related work.

WITNESSETH:

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

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

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

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

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

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

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

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 80 percent. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

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

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

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

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

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary for proper traffic operations in accordance with the plans of the PROJECT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF MUSKEGON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



September 13, 2010

EXHIBIT I

CONTROL SECTION STH 61609
JOB NUMBER 108641
PROJECT STP 1061(348)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$269,000	\$6,400	\$275,400

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$269,000	\$6,400	\$275,400
Less Federal Funds	<u>\$215,200</u>	<u>\$ 0</u>	<u>\$215,200</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ 53,800	\$6,400	\$ 60,200

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

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

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

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

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

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

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

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

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

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

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

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

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

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

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

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

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

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

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

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

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

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

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

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

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

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

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

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

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

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

March, 1998

APPENDIX B

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

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

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: HONORABLE MAYOR AND CITY COMMISSIONERS
FROM: Kenneth D. Grant, Income Tax Administrator 
DATE: October 19, 2010
RE: eTax Withholding Software

SUMMARY OF REQUEST:

The Income Tax Department seeks approval to enter into a contract with Insource Solutions Group to purchase the eTax Withholding program. The eTax Withholding tool enables business to make withholding payments electronically, submit W-2's electronically, and print withholding booklets directly off our website.

FINANCIAL IMPACT:

This product alone will save our department \$3,000 annually because we will no longer have to print and mail over 1,200 withholding booklets. Companies that withhold will simply login to our website to download all the necessary forms. Also, they can submit their monthly or quarterly payments online.

BUDGET ACTION REQUIRED:

\$7,500/one time set up fee
\$2,500 Annual Maintenance
\$ 75/per month Hosting

STAFF RECOMMENDATION:

Approval recommended

COMMITTEE RECOMMENDATION:

Contract for Services

1. Names

This agreement is between City of Muskegon Michigan, a Michigan Municipality (Client), and InSource Solutions Group, Inc., an Ohio corporation (Contractor).

2. Services to be performed

Contractor agrees to perform the following services for Client:

- **eTax Withholding** for filing with ISSI.
- Withholding tool enables taxpayers to make withholding payments and submit W-2's electronically to City.
- Hosting - InSource will host client's information on InSource's server(s).

3. Time for Performance

Contractor will perform the services according to the Estimated Schedule of Work set forth in Appendix A attached hereto and made part of this Agreement.

4. Payment

- | | |
|--|-------------------------|
| • eTax Withholding for filing with Innovative Software | \$7,500/one time set up |
| • eTax Withholding Annual Maintenance | \$2,500/annually |
| • Hosting | \$900/annually |

Prices shall not increase for a period of three (3) years from the effective date of this contract.

5. Terms of Payment

- Billing will be on a progressive basis
 - Each Phase of Project will be billed upon approval and successful implementation
 - Client at its sole discretion may retain up to 10% of total contract for each service for work not completed as outlined in Statement of Work; with the following exceptions
 - Project is dependent upon timely responses and testing by:
 - InSource
 - City of Muskegon
 - Innovative Software
 - InSource will complete work as committed provided that other parties involved in the project meet reasonable and mutually established deadlines.

6. Standard of Care, Warranty, and Limitation of Liability.

CONTRACTOR shall perform the Services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants with respect to work similar to that contemplated by this Agreement. In the event any portion of the services fails to comply with this warranty obligation and provided that CONTRACTOR is notified prior to five years after completion of such portion of the Services, CONTRACTOR will, at its option, re-perform such portion of the Services or refund the amount of compensation paid to CONTRACTOR for performance of that portion of the Services that fails to comply with this warranty. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARE HEREBY DISCLAIMED AND SHALL BE OF NO FORCE AND EFFECT. CONTRACTOR FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY RELATING TO INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS PROFITS, WHICH CLIENT MAY INCUR AS A RESULT OF ACTS OR OMISSIONS OF CONTRACTOR OR ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, OR OFFICIALS. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE IN THE TOTAL LIABILITY OF CONTRACTOR PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED \$1,000,000 OR ERRORS AND OMISSIONS POLICY, WHICHEVER IS GREATER.

7. Equipment and Supplies

Contractor, at Contractor's expense, will provide, at its expense all equipment, tools and supplies necessary to perform the contractual services.

8. Expenses

Contractor will be responsible for all expenses required for the performance of the contractual services.

9. Termination of Agreement

Both parties reserve the right to terminate this Agreement at any time and shall give minimum ninety (90) days written notice of such termination and specifying the effective date thereof. Notwithstanding, the above, neither the Contractor nor the City shall be relieved of liability for damages sustained by virtue of any breach of the Agreement by the Contractor or the City.

10. Compliance with Local Laws

The Contractor, at all times, shall observe and comply with all Federal, State, and City laws, ordinances, and regulations in any manner affecting the products and/or services provided herein.

11. Compliance with Anti-discrimination Laws

The Contractor agrees to both of the following:

- (1) That in the hiring of employees for the performance of work under the Agreement or any subcontract, no contractor shall, by reason of race, color, religion, sex, age, handicap, national origin, or ancestry, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates;

- (2) That no contractor, subcontractor, or any person acting on behalf of any contractor or subcontractor shall, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the Agreement on account of race, color, religion, sex, age, handicap, national origin, or ancestry.

12. Subcontracting

None of the services to be performed pursuant to this Agreement shall be subcontracted without the prior written consent of the Client. If such consent is granted by the Client and in the event Contractor subcontracts all or any portion of this agreement the Contractor shall be as fully responsible to the Client for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by it, as it is for the acts and omissions of persons directly employed by it. The Contractor shall insert in each subcontract appropriate provisions requiring compliance with all provisions of this Agreement.

13. Assignability

The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written approval of the Client.

14. Interest of Members of Client

No member of the governing body of the Client, and no other officer, employee, or agent of the Client who exercises any functions or responsibilities in conjunction with the carrying out of the project, to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

15. Warning: It is unlawful for officials and employees of Client to receive gratuities. Discrimination by

Contractor on grounds of race, religion, color, ancestry, national origin, or sex is unlawful and shall subject Contractor to forfeiture.

16. Interest of the Contractor

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the above-described project or any other interest, which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

17. Intellectual Property Ownership

Contractor shall retain all copyright, patents, trade secret and other intellectual property rights Contractor may have in anything created or developed by Contractor for Client under this Agreement ("Work Product"). Contractor grants Client a nonexclusive worldwide license to use and sublicense the use of the Work Product for the purpose of developing and marketing its products. Client may not transfer any rights in Work Product to another person or company. The license shall have a perpetual term and may not be transferred by Client. This license is conditioned upon full payment of the compensation due Contractor under this Agreement and the failure to make such payment shall void this license.

18. Contractor's Proprietary Materials

Contractor owns or holds a license to use and sublicense various materials in existence before the start date of this Agreement (Contractor's Materials). Contractor may, at its option, include Contractor's Materials in the work performed under this Agreement. Contractor retains all right, title and interest, including all copyrights, patent rights and trade secret rights in Contractor's Materials. Contractor grants Client a royalty-free nonexclusive worldwide license to use any of Contractor's Materials incorporated into the work performed by Contractor under this Agreement. Client may use Contractor's Materials only in conjunction with the Work Product and not in Client's other products. The license shall have a perpetual term and may not be transferred by Client.

19. Independent Contractor Status

The parties intend Contractor to be an independent contractor in the performance of the services. Contractor and Client agree to the following rights consistent with an independent contractor relationship.

- * Contractor will have the right to control and determine the methods and means of performing the contractual services.
- * Contractor has the right to perform services for others during the term of this Agreement.
- * Contractor has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- * Client shall not require Contractor or Contractor's employees or subcontractors to devote full time to performing the services required by this Agreement.
- * Neither Contractor nor Contractor's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Client.
- * Should the Contractor go out of business and there is no successor or assignee, the Client shall have the right to continual perpetual use of the Work Product (Software and supporting documentation).

20. State and Federal Taxes

Client will not:

- (a) Withhold Social Security and Medicare taxes from Contractor's payments or make such tax payments on Contractor's behalf, or
- (b) Withhold state or federal income tax from Contractor's payments or make state or federal unemployment contributions on Contractor's behalf.

Contractor will pay all applicable taxes related to the performance of services under this contract. This includes income, Social Security, Medicare and self-employment taxes. Contractor will also pay any unemployment contributions related to the performance of services under this contract.

If Contractor is required to pay any federal, state or local sales, use, and property or value added taxes based on the services provided under this Agreement, the taxes should be separately billed to Client. Client shall be responsible for paying any interest or penalties incurred due to late payment or nonpayment of any taxes by Client.

21. No Partnership

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf.

22. Confidentiality

The Contractor in performing the services set forth herein shall have access to confidential information of taxpayers of the City of Muskegon. The Contractor in performance of the duties set forth in this agreement shall not disclose to any third party for any reason except as required by order of a court of competent jurisdiction any income tax information concerning individual or business income tax returns or earnings or profits earned by an individual or by a business entity and no statistical or administrative data shall be disseminated or disclosed to any third party by the Contractor. The Contractor shall also comply with Ohio Revised Code 718.13 concerning confidentiality.

23. Security Specifications

Physical and Application security shall be provided as described in Appendix B.

24. Entire Agreement

This Agreement with attachment Appendix A is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Nothing shall be added to this Agreement unless it is appended hereto and appears in writing and with the proper authorized signatures of the Parties.

25. Successors and Assignees

This agreement binds and benefits the heirs, successors and assignees of the parties.

26. Notices

All notices must be in writing. A notice may be delivered to a party at the address that follows a party's signature or to a new address that a party designates in writing. A notice may be delivered:

- * in person
- * by certified mail, or
- * by overnight courier.

27. Governing Law

This agreement will be governed by and construed in accordance with the laws of the state of Ohio.

28. Counterparts

The parties may sign several identical counterparts of this agreement. Any fully signed counterpart shall be treated as an original.

29. Modification

This agreement may be modified only by a signed written agreement by both parties.

30. No Waiver

The waiver by either party of any breach or violation of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach or violation thereof.

31. Severability

If any court determines that any provision of this agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this agreement invalid or unenforceable and such provision shall be modified, amended or limited only to the extent necessary to render it valid and enforceable.

32. Hold Harmless

CONTRACTOR shall indemnify and hold harmless Client, its principals, officers, employees, and agents (collectively "Client") for any loss or damage actually sustained and incurred by Client, or for which Client is liable or is alleged to be liable, that is caused by the negligence or misconduct of CONTRACTOR or its contractors or agents, in the performance of Work at the Site or by CONTRACTOR's or its contractor's agents' breach of this Agreement beyond the applicable cure period. CONTRACTOR shall not be liable for any inconvenience, losses, or damages for delay, loss profits, or other consequential or incidental damages relating to the Work.

33. Insurance

CONTRACTOR shall acquire and maintain all necessary professional certifications, licenses, permits, and insurance at its expense. If requested, CONTRACTOR shall supply Client with a certificate showing insurance coverage and the forms, types, and minimum amounts shown below:

- (i) Worker's Compensation - Statutory limits;
- (ii) Comprehensive General Liability ("CGL") – Property Damage \$1,000,000 per each occurrence; \$1,000,000 annual aggregate; Personal Injury \$1,000,000 per occurrence and \$1,000,000 aggregate;

CLIENT:

City of Muskegon Michigan
933 Terrace Street
Muskegon, MI 49443

Dated: _____

, City Manager

CONTRACTOR:

InSource Solutions Group, Inc.,
An Ohio Corporation
7731 Marsh Blue Court
Westerville, Ohio 43082
Taxpayer ID: 20-1400008

Dated: _____

By: _____

Teri Giesler
CEO
InSource Solutions Group

Date: October 26, 2010
To: Honorable Mayor and City Commissioners
From: Ann Becker, City Clerk
RE: 2010 National League of Cities
Membership Dues

SUMMARY OF REQUEST: The 2010 National League of Cities Membership Dues has been received.

FINANCIAL IMPACT: \$3,813.

BUDGET ACTION REQUIRED: This has not been budgeted for.

STAFF RECOMMENDATION: None.

To strengthen
and promote
cities as centers
of opportunity,
leadership, and
governance.



**National League
of Cities**

1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1763

202-626-3000
Fax: 202-626-3043
www.nlc.org

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Executive Director

Donald J. Borut

October 01, 2010

Ann Marie Becker - City Clerk
City of Muskegon
933 Terrace St
Muskegon, MI 49440-1348

First Renewal Notice

Dear City Clerk Becker:

Thank you for your continued support and involvement as a member city of the National League of Cities we are proud to serve your municipality and be your professional home. Your patronage has continued to make our organization a powerful force especially in 2009 as we represented the interest of cities in the debates that led to the extraordinary American Recovery and Reinvestment Act legislation.

In 2009, your membership also allowed us to break new ground, and together, we were able to successfully accomplish the following:

- § Saved residents of 350 NLC member cities more than \$1 million on their prescription drugs through the NLC Prescription Discount Card program
- § Saved cities an average of 15% on purchase goods and services through the U.S. Communities Government Purchasing Alliance.
- § Engaged more than 1000 city officials through NLC's Constituency Groups by providing networking opportunities and information sharing, support for NCL's 2009 legislative priorities, and policy resolutions that were adopted by NLC.
- § Held a successful Green Cities Conference in Portland, Ore., bringing together over 400 elected officials, municipal staff, and leading experts from around the country to explore various aspects of sustainability including energy issues, green buildings and operations, climate change and community designs.

In 2010, we are poised to deliver even more value for your membership dues!

- § Watch for increased focus on securing additional federal support for economic recovery and jobs creation in our communities, as well as promoting federal investments in the nation's transportation system, local energy efficiency innovations, and efforts to strengthen and stabilize the nation's housing market.
- § Watch for enhanced webinars for city officials on how to promote financial literacy and neighborhood revitalization in cooperation with private sector partners.
- § Watch for the launch of our new robust website complete with the myriad of resources you currently appreciate, and a host of new features for you to use.
- § Watch for continued development of deeper programs of work on community development and infrastructure, sustainability, finance an economic development, and immigrant integration.

Past Presidents: John DeStefano, Jr., Mayor, New Haven, Connecticut • Brian J. O'Neill, Councilman, Philadelphia, Pennsylvania **Directors:** Ulysses Z. Addison, Jr., Councilmember, Baton Rouge, Louisiana • David Baker, Mayor, Kenmore, Washington • Geoffrey C. Beckwith, Executive Director, Massachusetts Municipal Association • M. Margaret Bales, Commissioner, Lauderdale, Florida • Charles A. Blango, Alderman, New Haven, Connecticut • William G. "Bill" Brooks, Mayor, Belle Isle, Florida • Kenneth H. Bullock, Executive Director, Utah League of Cities and Towns • Jim Byard, Jr., Mayor, Prichville, Alabama • Gary W. Campbell, City Director/Vice Mayor, Fort Smith, Arkansas • Sheri Capehart, Councilmember, Arlington, Texas • Nancy G. Carter, Council Member, Charlotte, North Carolina • Brad Cole, Mayor, Carbondale, Illinois • Sandra Colvin-Ray, Council Member, Minneapolis, Minnesota • John F. Cook, Mayor, El Paso, Texas • Mildred C. Crump, Council President, Newark, New Jersey • Joe Davis, Sr., Alderman, Milwaukee, Wisconsin • Gretchen Driskell, Mayor, Saine, Michigan • Larry G. Frang, Executive Director, Illinois Municipal League • Dan Furtado, Councilmember, Campbell, California • John A. Garner, Jr., Executive Director, Pennsylvania League of Cities and Municipalities • Paul M. Gresham, Councilmember, Centerville, Ohio • Miriam Hair, Executive Director, Municipal Association of South Carolina • Rap Hankins, Council Member, Trotwood, Ohio • Terry B. Henderson, Mayor Pro Tem, La Quinta, California • Edna Branch Jackson, Mayor Pro-Tem/Alderman at-Large, Savannah, Georgia • Dennis Kavanaugh, Councilmember, Mesa, Arizona • Greg Lemka, Council Member, Moorhead, Minnesota • George Lewis, Executive Director, Mississippi Municipal League • Myron Lowery, Council Member, Memphis, Tennessee • Michael McCauley, Executive Director, League of Oregon Cities • James F. Miller, Executive Director, League of Minnesota Cities • Mark Mitchell, Councilmember, Tempe, Arizona • Garret L. Nancolas, Mayor, Caldwell, Idaho • Ron Natinsky, Councilmember, Dallas, Texas • Laura W. Padgett, Councilmember, Wilmington, North Carolina • Randall W. B. Purvis, Council Member, Colorado Springs, Colorado • Ed P. Reyes, Councilmember, Los Angeles, California • Gene Schuller, Alderman, Chicago, Illinois • John Spring, Mayor, Quincy, Illinois • Sharyn T. Tallman, Councilor, Parkersburg, West

Page 2
City of Muskegon

Please check our website www.nlc.org <<http://www.nlc.org>> for updates and opportunities to get involved. We are confident that NLC leadership will continue to make strategic decisions in the face of rapidly changing technology, critical funding issues, and complex changes in this environment.

Should you have any questions about your membership dues, please contact Member Relations at memberservices@nlc.org <<mailto:memberservices@nlc.org>> or 202-626-3100. We are counting on your support.

Sincerely,



Donald J. Borut
Executive Director

Past Presidents: John DeStefano, Jr., Mayor, New Haven, Connecticut • Brian J. O'Neill, Councilman, Philadelphia, Pennsylvania • Ulysses Z. Addison, Jr., Councilmember, Baton Rouge, Louisiana • David Baker, Mayor, Kenmore, Washington • Geoffrey C. Beckwith, Executive Director, Massachusetts Municipal Association • M. Margaret Bates, Commissioner, Lauderdale, Florida • Charles A. Blango, Alderman, New Haven, Connecticut • William G. "Bill" Brooks, Mayor, Belle Isle, Florida • Kenneth H. Bullock, Executive Director, Utah League of Cities and Towns • Jim Byard, Jr., Mayor, Pralville, Alabama • Gary W. Campbell, City Director/Vice Mayor, Fort Smith, Arkansas • Sheri Capehart, Councilmember, Arlington, Texas • Nancy G. Carter, Council Member, Charlotte, North Carolina • Brad Cole, Mayor, Carbondale, Illinois • Sandra Colvin-Roy, Council Member, Minneapolis, Minnesota • John F. Cook, Mayor, El Paso, Texas • Mildred C. Crump, Council President, Newark, New Jersey • Joe Davis, Sr., Alderman, Milwaukee, Wisconsin • Gretchen Driskell, Mayor, Saline, Michigan • Larry G. Frang, Executive Director, Illinois Municipal League • Dan Furtado, Councilmember, Campbell, California • John A. Garner, Jr., Executive Director, Pennsylvania League of Cities and Municipalities • Paul M. Gresham, Councilmember, Centerville, Ohio • Miriam Hall, Executive Director, Municipal Association of South Carolina • Rap Hankins, Council Member, Trotwood, Ohio • Terry B. Henderson, Mayor Pro Tem, La Quinta, California • Edna Branch Jackson, Mayor Pro-Tem/Alderman at-Large, Savannah, Georgia • Dennis Kavanaugh, Councilmember, Mesa, Arizona • Greg Lemke, Council Member, Moorhead, Minnesota • George Lewis, Executive Director, Mississippi Municipal League • Myron Lowery, Council Member, Memphis, Tennessee • Michael McCauley, Executive Director, League of Oregon Cities • James F. Miller, Executive Director, League of Minnesota Cities • Mark Mitchell, Councilmember, Tempe, Arizona • Garret L. Nancolas, Mayor, Caldwell, Idaho • Ron Natinsky, Councilmember, Dallas, Texas • Laura W. Padgett, Councilmember, Wilmington, North Carolina • Randall W. B. Purvis, Council Member, Colorado Springs, Colorado •



National League of Cities

Strengthening & promoting cities as centers of opportunity, leadership and governance

First Renewal Notice

Membership Renewal Notice

Printed: 10/1/2010

{Renewal Information}

Bill To:

2198

Renewal Notice: 31250

Ann Marie Becker - City Clerk
City of Muskegon
933 Terrace St
Muskegon, MI 49440-1348

Note: A municipality must be a current member of its State League to be a member of NLC.

Membership Type	Population	Begin Date	End Date
DMC / NLC/State League-Dues	40,105	01/01/2011	12/31/2011

Voluntary Contributions

Legal Defense Fund contribution: suggested (5% of annual dues)	OR Other LDF contribution: _____
Total with suggested contribution: \$4,003.65	Total Payment: _____

Total: \$3,813.00
Adjustments: \$0.00
Payment/Allowance: \$0.00
Amount Due: \$3,813.00

Joined: 01/01/1970

Is your Municipality taking advantage of their NLC Membership ?

NLC LEGAL DEFENSE FUND: In December 2002, the NLC board of directors authorized the creation of an NLC Legal Defense Fund. This fund will be supported in part by voluntary contributions from NLC members. The fund will cover fees for carefully selected litigation on behalf of municipalities where a court decision or regulatory ruling—either favorable or unfavorable—could have a significant impact.

The NLC board suggests that member cities make an annual contribution to of an amount equal to five (5) percent of their annual dues which is included in your invoice--voluntary contributions of any size are welcome. Funds collected will accumulate in an interest-bearing account. A committee of local government legal experts will oversee the fund's operations and select the cases on which NLC will intervene. If you have any questions, please contact Lars Etkorn at etzkorn@nlc.org. Thank you in advance for your participation in this important initiative.

PLEASE REMIT PAYMENT TO:
(include this stub with payment)

MEMBERSHIP LOCKBOX 4047
National League of Cities
PO Box 17425
Baltimore, MD 21298-8220

PAYMENT INFORMATION:

Customer #: 2198 Renewal Notice: 31250
Amount Due: \$3,813.00
Payment:
 Check # _____
 Visa MasterCard
Card # _____ Exp: _____

Print Name as it appears on Card

Authorized Signature

The Amount shown above is the amount of your city's annual dues for membership in the National League of Cities. It includes the cost of an annual subscription to Nation's Cities Weekly newspaper for eligible elected officials from your city. Questions or Corrections? Please contact the NLC Member Services Department at (202) 626-3100.

DATE: 10/14/2010
TO: Honorable Mayor and Commissioners
FROM: Anthony Kleibecker, Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN100099

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **753 OAK AVE** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN100099 - 753 OAK AVE

Location and ownership: This structure is located on Oak Ave. between Getty and Scott Streets and is owned by LEELABOO DEVELOPMENT LLC.

Staff Correspondence: A dangerous building inspection was conducted on 06/10/10. The Notice and Order to Repair was issued on 06/25/10. On 08/05/10 the HBA declared the structure substandard and dangerous.

Owner Contact: The Inspection Department had some phone contact with daughter of deceased owner who indicated the home was in foreclosure. The plumbing inspector responded to complaint of raw sewage dumped out of rear window on 07/22/09. Robin Wolcott- representing Deutsche Bank was present at the HBA meeting dated 08/05/10 where she indicated Safeguard Properties tried to enter home to re-key was met by a gentleman with gun. Home was boarded up by City of Muskegon. The bank contacted Inspections to schedule interior inspection stating home had been cleaned. Inspectors could not enter to complete inspection dated 09/10/10 because of human feces still present throughout the home. Inspections Department received letter from LPS Asset Management stating property had been sold to new buyer. The new buyer Scott McDonald contacted Inspections stating he was unaware of dangerous building status when purchased from bank and wants to investigate options.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$ (15,300) Entire property

Estimated cost to repair: \$5,000 (Exterior only)

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

SUMMARY FOR: 753 OAK AVE

This is a wood frame, single family dwelling. The garage has been converted to living space without a permit or any inspections. The list of exterior items is short and the major repairs on the outside of the dwelling consist of a new roof, repairing windows and some broken steps. However the major cost to renovate this building is the inside. This building has human waste through out the house that permeates the entire building. It is unlikely that this house can be rehabilitated without removing all the wall and floor surfaces. The cost of interior repairs would most likely exceed the value of the structure. This building, in it's current state, is not habitable and if left renovated will become a blighting influence on the neighborhood.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Thursday, June 10, 2010

Enforcement # EN100099 **Property Address** 753 OAK AVE
Parcel #24-205-050-0002-00 **Owner** JOHNSON WILSON

Inspector: Henry Faltinowski

Date completed: 06/10/2010

DEFICIENCIES:

- 1. Broken front steps.**
- 2. Roof covering needs replaced.**
- 3. Broken out windows.**
- 4. Open soffit.**
- 5. No permits for work on garage conversion.**
- 6. Human waste throughout home.**

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

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

Henry Faltinowski, Building Inspector

Date

753 Oak 6/10/2010 D.B.



753 Oak





753 Dah





753 Oak



DATE: 10/14/2010
TO: Honorable Mayor and Commissioners
FROM: Anthony Kleibecker, Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN100108

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1554 PINE ST Area 11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN100108 - 1554 PINE ST

Location and ownership: This structure is located on Pine St. between Forest and Grand Streets and is owned by US BANK, 4801 Fredrica St., Owensboro, KY 42301.

Staff Correspondence: A dangerous building inspection was conducted on 06/15/10. The Notice and Order to Repair was issued on 06/25/10. On 08/05/10 the HBA declared the structure substandard and dangerous.

Owner Contact: No one was present for the HBA meeting dated 08/05/10. No permits have been issued, no inspections scheduled and no owner contact.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$ (19,500)

Estimated cost to repair: \$ 1,000 (Exterior Only)

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

SUMMARY FOR: 1554 PINE ST

This is a 2 story wood framed, single family dwelling. This building appears to be abandon and has structural damage to the rear porch of the building that will require the replacement of the roofing material as well as the sheeting and the structural members for the roof. If left in it's current condition this building will continue to be an attractive nuisance and will continue to be vandalized.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Friday, June 25, 2010

Enforcement # EN100108 **Property Address** 1554 PINE ST
Parcel #24-205-283-0003-00 **Owner** US BANK

Inspector: Henry Faltinowski

Date completed: 06/15/2010

DEFICIENCIES:

- 1. Replace all damaged roof structural problems on back porch area rafters, sheathing, roofing.**
- 2. Numerous broken out windows and doors on home and garage.**
- 3. Repair garage missing siding broken doors.**
- 4. Repair interior damaged drywall.**
- 5. Repair basement foundation wall leaking repair basement windows treated wood.**

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

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

Henry Faltinowski, Building Inspector

Date



1554 Pine





1154 Pine



1154 Pine





1154 Pine

