

MUSKEGON COUNTY BOARD OF COMMISSIONERS
MUSKEGON COUNTY, MICHIGAN

AGENDA

Community Development/Strategic Planning

Hall of Justice
990 Terrace, Muskegon, MI 49442
June 21, 2012 - 3:30 PM

Robert Scolnik, Chair
Benjamin Cross, Vice-Chair

-
- 1) Call to Order
 - 2) Roll Call
 - 3) Approval of Minutes of April 19, 2012
 - 4) Public Comment (on an agenda item)
 - 5) Items for Consideration
CDSP12/06 - 06 (Convention & Visitors Bureau) Adopt License Agreement with Fruitport Lions Charities, Inc., and Authorize Chair to Execute the Agreement
 - 6) Old Business
 - 7) New Business
 - 8) Public Comment (on a new topic)
 - 9) Adjournment

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the commission and state their name for the record. Comments shall be limited to two (2) minutes for each participant, unless time is extended prior to the public comment by a vote of a majority of the commission.

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE MUSKEGON COUNTY BOARD OF COMMISSIONERS AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520.

**Muskegon County
Community Development/Strategic Planning
April 19, 2012
3:30 p.m.
Hall of Justice, 990 Terrace
Muskegon, MI**

Robert Scolnik, Chair

Ben Cross, Vice-Chair

MINUTES

CALL TO ORDER

The meeting was called to order by Commissioner Scolnik at 3:37 p.m.

ROLL CALL

Present: Lewis Collins, Benjamin Cross, James Derezinski, Marvin Engle, Alan Jager, Anthony Longmire, Kenneth Mahoney, Scott Plummer, Robert Scolnik, I. John Snider, Rillastine Wilkins

APPROVAL OF MINUTES

It was moved by Mahoney, supported by Engle, to approve the minutes of the March 15, 2012, meeting as written. Motion Carried.

PRESENTATION

Mr. Andrew Haan, Downtown Muskegon Now, presented a power-point slide-show update on the Grand Trunk Depot project.

PUBLIC COMMENT (On an agenda item)

None.

ITEMS FOR CONSIDERATION

CD/SP12/04 – 04 It was moved by Engle, supported by Cross, to approve the issuance of a Request for Proposals for development, design, production, advertising sales, storage and delivery of the 2013 Muskegon County Visitors Guide Motion Carried.

Community Development/Strategic Planning
Minutes
April 19, 2012
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CD/SP12/04 – 05 It was moved by Mahoney, supported by Longmire, to approve extending the option agreement for a period of one year for the purchase of the Grand Trunk Depot by Downtown Muskegon Now and to authorize the Chairman of the County Board of Commissioners to sign the agreement Motion carried.

OLD BUSINESS

None.

NEW BUSINESS

Mr. Robert Lukens, Muskegon County Community Development Director, provided a presentation on the new Muskegon County Convention & Visitor's Bureau Website.

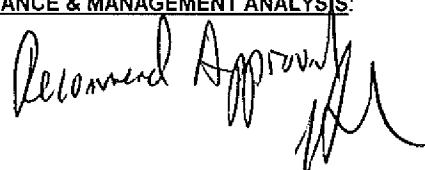
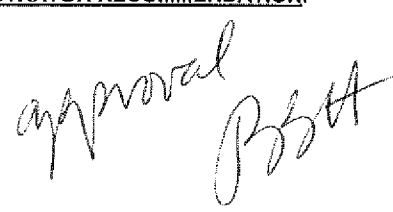
PUBLIC COMMENT (On a new topic)

None.

ADJOURNMENT

There being no further business to come before the Community Development/Strategic Planning Committee, the meeting adjourned at 4:15 p.m.

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE COMMUNITY DEVELOPMENT/STRATEGIC PLANNING		BUDGETED <input type="checkbox"/>	NON-BUDGETED <input type="checkbox"/>	PARTIALLY BUDGETED <input type="checkbox"/>
REQUESTING DEPARTMENT COMMUNITY DEVELOPMENT		COMMITTEE DATE 6/21/2012	REQUESTOR SIGNATURE ROBERT LUKENS	
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>Fruitport Lions Charities, Inc., seeks a one-day License Agreement with the County of Muskegon to use Heritage Landing on Wednesday, July 4, 2012 for a free, open-to-the-public County-wide fireworks display celebrating Independence Day.</p> <p>Fruitport Lions Charities, Inc., will not charge admission to the event, and no food, refreshments or alcohol will be sold or served at the event. A deposit has been received by the County and the contract stipulates that a deposit and proof of insurance will be required. Proper permitting by the City of Muskegon has been secured for the proposed fireworks display.</p> <p>The License Agreement for the proposed event has been reviewed by the County's Corporate Counsel and approved.</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
<p>Move to adopt the License Agreement with Fruitport Lions Charities, Inc., to provide a license for the use of Heritage Landing on July 4, 2012 for a fireworks display, and to authorize the Chairperson of the County Board to execute the agreement.</p>				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE & MANAGEMENT ANALYSIS:</u> 		
<u>CORPORATE COUNSEL ANALYSIS:</u> Concur T. Williams		<u>ADMINISTRATOR RECOMMENDATION:</u> 		
AGENDA DATE: 6/21/12				
AGENDA NO.: CDSP12/06-06		BOARD DATE: 12/26/12		PAGE NO.

LICENSE AGREEMENT
BETWEEN
THE COUNTY OF MUSKEGON
AND
FRUITPORT LIONS CHARITIES, INC.
FOR HERITAGE LANDING FESTIVAL USE IN 2012

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between the County of Muskegon, a public corporation with an address of 990 Terrace Street, Muskegon, Michigan 49442, hereinafter referred to either as “COUNTY” or “LICENSOR” and Fruitport Lions Charities, Inc., c/o Michael Johnson, 141 West Pontaluna Rd., Muskegon, MI 49444, hereinafter referred to as “LICENSEE” for use of Heritage Landing for the “Festival Event” of 2012.

RECITALS

A. WHEREAS, COUNTY owns and operates a facility, commonly referred to as Heritage Landing, hereinafter referred to as “Facility”, situated within the City of Muskegon; and,

B. WHEREAS, COUNTY, in its operation and management of said facility desires to make facility available to public interest groups and organizations to promote such public interest objectives and to maximize citizen use of such facility; and

C. WHEREAS, LICENSEE, as above identified, has requested special authorization from the COUNTY to use facility for staging of a 4th of July Fireworks event, hereinafter referred to as “Festival Event”, and the COUNTY, through its Board of County Commissioners, is desirous of permitting and authorizing such activity in accordance with the terms and

conditions herein contained;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

AGREEMENT

SECTION 1 - LICENSE TO USE HERITAGE LANDING

In consideration of the covenants herein contained, the COUNTY hereby grants to LICENSEE the right and privilege to conduct and stage certain Festival Event activities at, and upon, COUNTY facility property, commonly referred to as Heritage Landing, situated within the City of Muskegon.

SECTION 2 - USE OF PROPERTY

LICENSEE shall be permitted to use and occupy facility for those activities reasonably relating to the conducting of the Festival Event during calendar year 2012 on dates specified in Section 3 below. In concurrence with the County Administrator, the Director of Public Works may prohibit any activity that they determine is not reasonably related to the conducting of the Festival Event.

SECTION 3 - PERIOD OF USE

LICENSEE shall hold the Festival Event from 5:00 p.m. on July 4, 2012 to 11:00 p.m. on July 4, 2012. LICENSEE is authorized to have use of Heritage Landing one (1) day(s) before the Festival Event for set-up and one (1) day(s) after the Festival Event for clean-up. LICENSEE must obtain prior written approval from Director of Public Works in the event that the LICENSEE shall require additional days for set-up and clean-up. Rain dates for the Festival Event are Friday, July 6, 2012 or Saturday, July 7, 2012, with usage requirements based on those outlined above. Set-up and clean-up are for one day prior and one day following the Festival

Event, respectively.

SECTION 4 – RESERVATION DEPOSIT

LICENSEE shall pay a reservation deposit of \$500.00 (\$500.00 per reserved day) to the County Treasurer, and payment of said reservation deposit shall be due and payable at the time of contract acceptance. No reservation will be valid until the reservation deposit is received. The reservation deposit shall be forfeited if the event is canceled. In the event LICENSEE damages or leaves the premises in less than satisfactory condition that requires COUNTY to make repairs not reasonably anticipated by COUNTY for such festival events, actual cost of repairs will be charged to LICENSEE. In the event that the reservation deposit is not sufficient to cover the costs necessary to restore the facility to its “pre-event” condition, the LICENSEE will be billed for the balance. The reservation deposit will be refunded after an inspection of the premises is completed after the event.

SECTION 5 – COMPENSATION/RENT

There shall be no compensation or rent paid, with the exception as provided in Section 15, by LICENSEE, inasmuch as the COUNTY has determined, through its Board of Commissioners, that this use of property is within the public interest and consistent for the purpose for which the park is dedicated.

SECTION 6 - UTILITIES

LICENSEE shall pay all charges for all utilities, including but not limited to electricity, light, heat, water, power and telephone rendered or supplied upon or in connection with the LICENSEE's use of said facility. Said cost, to the extent not determinable by direct charge computation, shall be determined to equal amount of utility charge in excess of that average charge imposed for a comparable period, to be determined by the Director of Public Works.

Provided, however, any and all special hook-ups or support facilities required by LICENSEE for its event shall be solely the responsibility of the LICENSEE to pay.

SECTION 7 – RESTROOMS

LICENSEE shall bear responsibility for payment of all charges associated with the providing of toilet facilities on the property during the period of Festival Event. LICENSEE shall provide a sufficient number of portable restrooms for use by all LICENSEE participants and guests as well as users of the facility.

SECTION 8 - ACCEPTANCE OF PROPERTY AS-IS

LICENSEE accepts the buildings, improvements and any equipment in or on the facility in their existing conditions. No representation, statement or warranty either express or implied, has been made by or on behalf of COUNTY as to said condition, as to the use that may be made of such property, except as may be expressly limited herein by way of restriction. In no event shall COUNTY be liable to LICENSEE for any defect in such property or for limitations on its use. No representational warranty of habitability, express or implied, has been made by or on behalf of the COUNTY.

SECTION 9 - MAINTENANCE/SET-UP/CLEAN-UP

LICENSEE shall, at its own expense, take all necessary steps to organize and set-up the facility for Festival Event activities. All costs associated with same shall be borne exclusively by LICENSEE.

In addition, LICENSEE shall bear full responsibility for cleaning up of the facility. In addition thereto, LICENSEE affirmatively covenants to restore the facility fully to its “pre-

event” condition at the completion of Festival Event activities.

SECTION 10 - COMPLIANCE WITH LAW

LICENSEE shall comply with all requirements which may be imposed by public authorities, whether State or local, with regard to equipping facility for conducting of Festival Event activities.

SECTION 11 – CHANGES OR ADDITIONS TO THE PROPERTY

Any changes and/or additions to property necessitated as a result of any such requirements shall be solely at the cost, and at the expense of the LICENSEE; provided, however, that the property may not be physically altered in a permanent manner except upon prior written approval of the Director of Public Works, in concurrence with the County Administrator, as above identified.

**SECTION 11 – LICENSEE AUTHORIZATION/OBLIGATION
TO RESTRICT USE OF PARK PROPERTY AND ALCOHOL USE**

NOT APPLICABLE FOR THIS EVENT

~~— LICENSEE is authorized to dispense alcohol in accordance with State and local laws.~~

SECTION 12 – SECURITY MANAGEMENT

LICENSEE shall make suitable arrangements for providing reasonable security personnel during the period of the Festival Event. LICENSEE shall provide satisfactory written proof of same to the Director of Public Works prior to the Festival Event. LICENSEE shall be responsible for management of facilities and property the during period of the License.

SECTION 13 – INSURANCE AND INDEMNITY

LICENSEE shall, at its own expense, provide and keep in force, general public liability insurance protecting the LICENSEE and COUNTY from all claims of damage to persons or property or for loss of life or of property, occurring on, in or about the facility, during the period

of Festival Event, and with respect to preparatory and clean-up activities occurring in connection with same. LICENSEE shall maintain comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and name COUNTY as additional insured; copies and certificates of coverage naming the COUNTY as an additional insured, shall be provided to the Director of Public Works prior to the Festival Event.

LICENSEE agrees to indemnify and hold COUNTY harmless as against all claims, liabilities, costs or expenses, including attorney fees and costs, relating to any third party complaint as brought by Festival Event patron(s) or contractee(s), or agent(s) of same alleging injury or damage of any kind, except for the acts and omissions of the employees, representatives, and agents of the COUNTY. The County agrees to indemnify and hold LICENSEE harmless as against any claims, liabilities, costs or expenses that are caused by employees, represenatives, and agents of the COUNTY.

LICENSEE shall furthermore, and at its own expense, keep in force such other insurance against other insurable hazards in such amounts as may from time to time be required by COUNTY, provided that such are insurable assets and hazards commonly insured against with respect to similar premises and uses. LICENSEE shall provide workers' compensation coverage for any employees in accordance with State law.

SECTION 14 - OBLIGATIONS AND REPRESENTATIONS
IN REGARD TO CONTRACT CONTRACTEES AND VENDEES

LICENSEE represents, and agrees to provide evidence upon request, of satisfactory agreements existing between LICENSEE and all Contractees/Vendees offering services for goods at the facility during the period of Festival Event. Such contracts of agreement shall include, with respect to all contracted vendee offerings, at a minimum, the following:

- A. Requirement that Contractee/Vendee maintain adequate insurance and provide

workers' compensation coverage for any of its employees;

B. Contractee/Vendee shall be an Equal Opportunity Employer;

C. Contractee/Vendee shall maintain adequate levels of liability and casualty insurance, to be determined adequate in the reasonable exercise of judgment of Festival Event;

D. Contractee/Vendee shall comply with all rules and regulations appurtenant to use of park and facilities.

E. LICENSEE shall exercise best efforts to engage local contractors and local veteran contractors.

SECTION 15 — ADMISSION TICKET CHARGE COLLECTION FOR COUNTY

NOT APPLICABLE FOR THIS EVENT

~~A. The LICENSEE shall pay the COUNTY 5% (five percent) of the total admission ticket charges collected for the 2012 Festival Event.~~

~~B. The COUNTY shall have full access to the LICENSEE'S financial records for the Festival Event, as part of this Agreement.~~

~~C. This ticket percentage charge shall be paid to the COUNTY within 30 days of the conclusion of the Festival Event.~~

SECTION 16 — EVENT PARKING —

NOT APPLICABLE FOR THIS EVENT

~~—— Convention and Visitors Bureau (CVB), Carpenter and Heritage Landing properties will be available to Festival Event for parking. Festival will be responsible for access and control of parking. It being understood that twenty (20) parking spaces will be withheld and reserved at the CVB for staff parking, temporary visitor's parking, and other parking as determined by the CVB~~

~~and COUNTY personnel. In exchange for this license, LICENSEE will charge a minimum of Five Dollars (\$5.00) per vehicle per day. Provided, however, that the LICENSEE will pay to the COUNTY fifty (50%) percent of all fees collected regardless of the rate charged within sixty (60) days from the close of the event. The return of the reservation deposit will be conditioned on the satisfactory payment to the COUNTY of the event parking fee.~~

SECTION 17 – COUNTY EMPLOYEES

It is understood that during the course of the Festival Event, County employees may be used as necessary to ensure that the Heritage Landing Property and its related facilities are properly operated and maintained. It is also understood that when County employees are engaged in connection with this Festival that the licensee shall be responsible for any cost incurred by the County, including wages, fringe benefits and overtime pay, as applicable. These amounts will be invoiced to the licensee within 30 days following the Festival Event.

SECTION 18 - RELATIONSHIP BETWEEN COUNTY AND LICENSEE

It is understood that the relationship created by this Agreement between the County of Muskegon and the Festival Event shall be LICENSOR-LICENSEE. It is not a joint venture, a partnership or a cooperative arrangement in any sense. Nothing in this Agreement shall be construed so as to give rise to an agency relationship as between COUNTY and LICENSEE. Nothing in this Agreement shall be construed so as to give rise to an arrangement other than authorization by COUNTY for LICENSEE to use property in accordance with the terms and conditions as herein set forth. It is further understood that the conduct of the Festival Event shall be the exclusive responsibility of the LICENSEE.

SECTION 19 - MICHIGAN LAW

This Agreement shall be governed by the laws of the State of Michigan. Any litigation regarding this Agreement or its contents shall be filed in the County of Muskegon, if in State Court, or in the United States District Court for the Western District of Michigan, if in Federal Court.

SECTION 20 - TERMS AND CONDITIONS

The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

SECTION 21 – ASSIGNMENT

LICENSEE shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. This Agreement is personal between the parties hereto and may not be assigned without written permission of the non-transferring party.

SECTION 23 - ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superceded or changed by any oral agreements, course of conduct waiver or estoppel.

SECTION 24 - NO THIRD-PARTY BENEFICIARY

No person dealing with the COUNTY or LICENSEE shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement. This Agreement is not intended to, nor shall it be interpreted to create a special relationship between the COUNTY or the LICENSEE and any staff, visitors, residents, or other individuals who may have business through the COUNTY.

SECTION 25 – SEVERABILITY

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

SECTION 26 – EXECUTION OF COUNTERPARTS

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

SECTION 27 – AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, person, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any State and/or Federal law in order to enter into this Agreement have been fully complied with.

Furthermore, by entering into this Agreement, LICENSEE hereby warrants that it shall not have breached the terms or conditions of any contract or agreement to which LICENSEE is obligated, which breach would have a material effect there on.

IN WITNESS WHEREOF, the following signators, having been duly authorized to execute this Agreement, execute same by and on behalf of their respective organizations.

LICENSEE:
Fruitport Lions Charities, Inc.

LICENSOR:
County of Muskegon

By: Michael Johnson
Its: President

By: Kenneth Mahoney
Chairperson, Muskegon County Board
of Commissioners

Dated: _____

Dated: _____