

MUSKEGON COUNTY BOARD OF COMMISSIONERS  
MUSKEGON COUNTY, MICHIGAN

**AGENDA**

**FULL BOARD**

**Hall of Justice**

**990 Terrace, Muskegon, MI**

**January 29, 2013 - 3:30 PM**

**Kenneth Mahoney, Chair**  
**Rillastine Wilkins, Vice-Chair**

- 
1. Call to Order
  2. Invocation
  3. Pledge of Allegiance
  4. Roll Call
  5. Approval of Agenda
  6. Approval of the Minutes
    - a) Organizational Meeting of January 3, 2013
    - b) Full Board Meeting of January 15, 2013
  7. Public Comment (on an agenda item)
  8. Communication
  9. Committee Reports
    - A. Community Development/Strategic Planning Committee (Page 3)
    - B. Transportation Committee (Page 4)
    - C. Ways & Means Committee (Page 5)

**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 period by a vote of a majority of the commission.**

10. Chairman's Report/Committee Liaison Reports
  - A. Kenneth Mahoney; Reappointment to Muskegon Area First, term through 12/31/2014
  - B. Solid Waste Appointment, term through 12/31/2014
  - C. Bonnie Hammersley; Reappointment to Building Authority, term through 6/30/2015
  - D. Muskegon Port Advisory Committee Appointments, terms through 12/31/14
  
11. Administrator's Report
  - A. Approval of Corporate Counsel Services Contract with Theodore N. Williams, Jr. and Williams Hughes, PLLC and Authorize Chairman to Sign
  - B. Approval of Notice of Proposed Amendments to the Board Rules be Made Part of Board Minutes
  
12. Old Business
  
13. New Business
  
14. Public Comment (on a new topic)
  
15. Adjournment

**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

The Community Development/Strategic Planning Committee met on January 17, 2013, it was recommended and I move:

CD/SP13/01 - 01 To adopt the Agreement with BeanBox Company to provide bicycle rentals from the Union Depot with commissions paid to the CVB/County of Muskegon based upon monthly rental revenues and to authorize the Chairperson of the County Board to execute the agreement.

CD/SP13/01 – 02 To authorize a free “Muskegon County Parks Day” for Twin Lake Park and Pioneer Park on Saturday, May 4<sup>th</sup>, from 10:00 a.m. to 4:00 p.m.

The Transportation Committee met on January 17, 2013; it was recommended, and I move:

- TR13/01-01 To approve the Muskegon Area Transit System's FY2014 application for \$1,124,215 in state operating and capital assistance, to authorize the Resolution of Intent to apply for financial assistance, to name the County Administrator as the Transportation Coordinator, and to publish the public notice.
  
- TR13/01-02 To approve Lease Amendment No. 2 to Lease No. GS-05B-17680 between the County and the Transportation Security Administration (TSA), providing 246 square feet of office space to the TSA in the Airport terminal building, subsequently, extending the lease for up to seven years and increasing the annual rental rate to \$52.20/SF.
  
- TR13/01-03 To approve a one-year lease between the County and SkyWest Airlines, Inc. (SkyWest) in furtherance of SkyWest's intent to continue to provide commercial airline service.

The Ways & Means Committee met on January 22, 2013, it was recommended and I move:

- WM13/01 – 04a To approve the payment of the accounts payable of \$5,060,636.00 covering the period of December 29, 2012 through January 15, 2013 as presented by the County Clerk.
- WM13/01 – 05 To approve the recommended changes to Board Policy #2007-512 Responsible Engineering and Construction Contracting as presented.
- WM13/01 – 06 To approve a public hearing on February 12, 2013 to accept citizen comments on the Muskegon County Recreation Plan Update, 2013.
- WM13/01 – 07 To authorize the Chairman of the County Board of Commissioners to sign a contract with Detect P.I. & Recovery, LLC at a flat fee of \$30.00 for review of discovery and an hourly rate of \$45.00 per hour and mileage reimbursement at \$.55.5 per mile and pre-approved overnight or out of state costs beginning on January 1, 2013 through September 30, 2013 pending monthly review of expenditures.
- WM13/01 – 08 To revise the County of Muskegon purchasing Policy, Section V. Bid Process, E. Tie Bids language to state: "in the case of a tie bid or quote, when all factors including pricing are considered equal, a coin toss shall be used to determine which of the tied bidders receive the award".
- WM13/01 – 09 To authorize the Prosecutor to initiate the RFP process for collection agency services for collection of outstanding balances for prosecution costs assessed to individuals pursuant to County Ordinance 2011-393.

# REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Full Board		BUDGETED      NON-BUDGETED      PARTIALLY BUDGETED		
REQUESTING DEPARTMENT Administration		COMMITTEE DATE January 29, 2013		REQUESTOR SIGNATURE
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>The current contract for Corporate Counsel services expired on December 31, 2012. Attached is a proposed contract for Corporate Counsel Services between the County of Muskegon and Theodore N. Williams, Jr. and Williams Hughes, PLLC that would extend the term to December 31, 2013. The amount of compensation is unchanged in this contract.</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
<p>I move to approve the contract for Corporate Counsel Services for the calendar year 2013 with Theodore N. Williams, Jr. and Williams Hughes, PLLC and that the Chairman be authorized to execute the contract.</p>				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE &amp; MANAGEMENT ANALYSIS:</u>		
		<p style="font-size: 1.2em; text-align: center;">Recommended Approval</p>		
<u>CORPORATE COUNSEL ANALYSIS:</u>		<u>ADMINISTRATOR RECOMMENDATION:</u>		
		<p style="font-size: 1.2em; text-align: center;">approval</p>		
AGENDA DATE: 1/29/13	AGENDA NO.:	BOARD DATE: 1/29/13	PAGE NO.	

## CONTRACT FOR CORPORATE COUNSEL SERVICES

This Agreement, entered into and effective upon execution by and between the COUNTY OF MUSKEGON ("County"), through its Board of County Commissioners, hereinafter referred to as ("Board"), and the Professional Corporation of WILLIAMS HUGHES, PLLC, hereinafter referred to as ("Law Firm").

### RECITALS

WHEREAS, County through the Muskegon County Board of Commissioners, is authorized to appoint and employ or retain a Corporate Counsel to handle the County's civil legal affairs pursuant to MCLA 49.71; MSA 5.824; and

WHEREAS, Board has previously appointed Theodore N. Williams, Jr. to serve as County's Corporate Counsel to a term which expired on December 31, 2012, and Board is desirous of continuing that relationship; and,

WHEREAS, Board is informed and believes that Attorney Williams is desirous of continuing in the position of Corporate Counsel for the County of Muskegon and is further informed and believes that Law Firm is agreeable to continuing to provide such further and additional assistance as Attorney Williams may need in handling the County's legal affairs and the Board is persuaded that execution of this Contract with Attorney Williams and with the Law Firm is in the County's best interest;

NOW, THEREFORE, based upon such determinations, the parties to this Agreement hereby covenant and agree as follows:

#### **I. APPOINTMENT AND RETENTION OF ATTORNEY SERVICES**

**A. Appointment of Corporate Counsel.** The Board in accordance with the Muskegon County Board Rules, specifically Rule XX, "Corporate Counsel", appointed Attorney Theodore N. Williams, Jr. to serve as the Muskegon County Corporate Counsel pursuant to MCLA 49.71; MSA 5.824, and hereby re-appoints him as Corporate Counsel.

**B. Acceptance of Appointment and Assignment of Assistant Corporate Counsel.** Attorney Williams and Law Firm hereby accept such appointment as an independent contractor, to a term to expire on December 31, 2013. The parties expressly agree that nothing contained in this Contract, or the administration of it, shall create an employer-employee relationship. In the administration of this contract, the parties deem it advisable to, in addition to naming a Corporate Counsel, to name an Assistant Corporate Counsel. It is therefore agreed that Douglas M. Hughes will serve as Assistant Corporate Counsel, with the express understanding that Attorney Williams will remain principally responsible to the Board.

**C. Engagement of Law Firm.** The Board hereby agrees to engage Law Firm also as an independent contractor in order that the County may benefit from the additional attorney resources available through contracting with Law Firm.

**D. Retention/Limitation of Services.** The Board hereby retains Attorney Williams and Law Firm as independent contractors to handle the County's legal affairs, excluding specialty Bonding work and cases involving irreconcilable conflicts of interest. The parties hereto understand that it is the Board's intention that Law Firm be prepared and committed to provide representation to County on most, if not all, civil legal matters, subject to any exceptions hereinafter set forth.

**E. Board's Reservation of Rights.** Attorney Williams and Law Firm hereby commit to provide such representation to County and agree to provide such time, attention, skill, knowledge and professional ability as is necessary to most effectively and efficiently perform the services undertaken in this contract in accordance with the highest professional standards of the State of Michigan. Provided, however, Board expressly reserves the right, from time-to-time, and on extraordinary matters, to specially appoint another Attorney or Law Firm to handle same. However, prior to making such special appointment, Board shall consult with and obtain input from Corporate Counsel regarding the necessity of such special appointment.

## **II. COORDINATION OF WORK**

**A. Oversight and Reporting.** It is further agreed and understood by Corporate Counsel and Law Firm that the principal responsibility for day-to-day supervision will be handled by the Administrator on behalf of County, consistent with Board Rules, with ultimate responsibility to the County Board of Commissioners through its Board Chairperson.

**B. Reporting Required.** Corporate Counsel shall be obligated to keep the Administrator and Board advised on outstanding legal matters, which shall include, but not necessarily be limited to, a monthly written report. In turn, the Administrator shall endeavor to lend assistance to Corporate Counsel in his dealings with department heads and elected officials.

**C. Staff Coordination.** Board agrees to take reasonable steps to instruct staff and departments, through the Administrator, to assure that legal matters, including but not limited to contracts, agreements, complaints, citations, sanctions, subpoenas, claims, charges, etc., are referred to Corporate Counsel and Law Firm for handling.

## **III. SCOPE OF SERVICES**

**A.** Corporate Counsel shall be the chief civil legal officer and advisor of the County and shall exercise all powers and functions of the Office of Corporate Counsel as provided by law and Board Rules. Corporate Counsel shall be responsible to the Board for the proper administration of legal affairs of all departments of County government and shall act on behalf of the Board for those departments which are under the general control of the Board.

**B.** Corporate Counsel shall provide legal counsel to and attendance at all Board, standing committee, and statutory Board meetings unless such presence is excused by the Administrator, the Board chairperson or the committee chairperson.



C. Corporate Counsel shall provide legal counsel to the members of the Board, elected officials and County departments, divisions and agencies.

D. Corporate Counsel shall also study and render legal opinions regarding federal, state and local laws impacting on County activities either current or proposed and shall assist and advise County and its units as above described relative to all legal matters of concern. Parties acknowledge that the intent of this agreement is to impose responsibility on Corporate Counsel and Law Firm for providing "full service" advice, counsel and representation of County according to law and Board rules.

#### IV. CONFLICT OF INTEREST

Corporate Counsel and Law Firm hereby agree to comply with the terms of the Michigan Rules of Professional Conduct, specifically MRPC 1.7 and 1.8, and specifically Corporate Counsel and Law Firm covenant and agree to exercise their best efforts to avoid representation of a party, person or entity in any cause contrary to the interest of the County. Corporate Counsel and Law Firm shall absolutely desist from representing any private person or entity on any matter which County would be or may become involved as an opposing party. Cases involving criminal defense representation involving the Prosecutor's office will be reviewed on a case-by-case basis.

It is understood by County that Corporate Counsel and Law Firm currently represent a number of municipalities located both within and without of Muskegon County. Recognizing that a potential for a conflict of interest could develop in regard to Corporate Counsel or Law Firm representation of County and of such municipality, the following procedures shall be employed:

A. Attached to this Contract and identified as Exhibit A is a list of Law Firm's current clients.

B. In the event a potential conflict of interest exists with regard to representation of County and another on a given issue, then Corporate Counsel shall be obliged to identify such potential conflict of interest to the Administrator and the County Board Chairperson in writing identifying issue and potential cause of conflict.

C. The Administrator shall communicate any potential conflict to Board for a decision and Board may, as it deems appropriate, instruct Corporate Counsel and Law Firm to proceed in representing the County in such matters, or in the alternative, contact the Prosecutor's Office to handle the matter. Provided, however, in the event Corporate Counsel or Law Firm deems representation to be contrary to the Michigan Rules of Professional Conduct, then Corporate Counsel shall not be obligated to provide representation on such matters.

D. Notwithstanding the aforementioned, Corporate Counsel and Law Firm expressly commit not to represent any private party against the County in any matter, other than criminal defense.

## V. COMPENSATION

Corporate Counsel and Law Firm agree to provide services as hereinbefore discussed in accordance with an hourly rate of One Hundred Twenty-Five Dollars (\$125.00) per hour for Partner, Eighty Dollars (\$80.00) per hour for Associate and Fifty Dollars (\$50.00) per hour for Paralegal.

## VI. INDEMNITY AND INSURANCE

Corporate Counsel and Law Firm agree to hold harmless the County against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the County by reason of any of the following occurring during the term of this contract:

A. Any negligent or tortious act, error or omission held in a court of competent jurisdiction to be attributable in whole or in part to Corporate Counsel or the Law Firm, or any of their personnel, employees, consultants, agents, or any entities associated, affiliated (directly or indirectly) or subsidiary to Corporate Counsel or the Law Firm, now existing, or hereafter created, their agents and employees (herein collectively called "associates") for whose acts any of them might be liable;

B. Any failure by Corporate Counsel or the Law Firm or any of their associates to perform their obligations either implied or expressed under this contract.

Corporate Counsel and Law Firm agree to maintain at all times, at their expense, during the term of this contract, the following insurance:

i. Professional liability (errors and omissions) insurance with minimum limits of One Million (\$1,000,000) Dollars per occurrence; Two Million (\$2,000,000) Dollars aggregate.

ii. Worker's compensation and unemployment insurance which meets Michigan statutory requirements.

If during the term of this contract changed conditions or other pertinent factors should, in the reasonable judgment of the County, render inadequate the insurance limits, Corporate Counsel and Law Firm will furnish on demand such additional coverage as may reasonably be required and available under the circumstances. All such insurance shall be affected at Corporate Counsel and Law Firm's expense under valid and enforceable policies, issued by insurers of recognized responsibility which are well rated by national rating organizations and are acceptable to the County.

Said policies shall name Corporate Counsel and the Law Firm as the insured and such policy shall contain an agreement by the insurer that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior notice to the County. Certificates of insurance evidencing such coverage shall be submitted to the Administrator within thirty (30) days of the date the County executes the contract and at least fifteen (15) days prior to the expiration dates of expiring policies.

## **VII. LIMITATION ON LIABILITY**

Notwithstanding anything herein contained to the contrary, Corporate Counsel and Law Firm, by execution of this contract, accepts no responsibility whatsoever in regard to any act or occurrence, error or omission, which may have been committed prior to the effective date of its initial contract, either by the County, its agents or assignees or any other attorney or law firm that engaged in representation of the County.

## **VIII. MISCELLANEOUS FINANCIAL**

It is understood and agreed that County shall reimburse Law Firm for reasonable expenses directly connected to the handling of County work, including, but not necessarily limited to, copy/fax, travel, reporter and court fees, service of process fees and filing costs, and litigation expense. Separate line item expense billing shall be submitted to the Administrator for review and approval prior to payment in accordance with standard County billing procedures. It is further understood and agreed that Corporate Counsel shall bill on a monthly basis for legal services and expenses with bills organized by County department or function and with sufficient detail for County staff to verify and determine which fund in the County should be charged for those services and expenses.

## **IX. AMENDMENTS/COUNTER-SIGNATURE**

This Agreement may be signed in any number of counterparts and may be amended, in whole or in part, upon approval of all parties hereto; however, in order for such amendment to be effective, a document of equal dignity must be signed.

## **X. COORDINATION WITH THE MUSKEGON COUNTY PROSECUTOR**

The Muskegon County Prosecutor's office shall provide backup support to the Office of Corporate Counsel based on the terms and conditions contained in the Letter of Understanding attached hereto and identified as Exhibit B.

## **XI. TERMINATION OF AGREEMENT**

In accordance with Muskegon County Board Rule XX, Corporate Counsel and Law Firm serve at the pleasure and will of the Muskegon County Board of Commissioners and can be removed by a majority vote of those serving at any time during the term of this Agreement.

**XII. CARRYOVER PROVISION**

To insure continuous legal service to the Muskegon County Board of Commissioners and at the complete discretion of the newly elected Board, the contract will continue for a period not to exceed ninety (90) days beyond the expiration of the appointment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

COUNTY OF MUSKEGON

By: \_\_\_\_\_  
Kenneth Mahoney, Chairperson  
Muskegon County Board of Commissioners

WILLIAMS HUGHES, PLLC

By: \_\_\_\_\_  
Theodore N. Williams, Jr. individually  
and on behalf of the Law Firm

**CLIENT LIST OF WILLIAMS HUGHES, PLLC**

County of Muskegon (1985 to present)

City of Muskegon Heights (1990 to present)

City of Norton Shores (1980 to present)

Township of Beaver (1998 to present)

Township of Blue Lake (1980 to present)

Township of Casnovia (1985 to present)

Township of Claybanks (2003 to present)

Township of Denver (1980 to present)

Township of Holton (1990 to present)

Charter Township of Muskegon (2001 to present)

Village of Hesperia (1980 to present)

Muskegon Housing Commission (1997 to present)

Michigan Department of Transportation, Highway Negligence Division (1986 to present)

Accident Fund Insurance Company of America (1992 to present)

Michigan Municipal Risk Management Authority

ASU Group Risk Management Services

## EXHIBIT B

### LETTER OF UNDERSTANDING

This is a Letter of Understanding, effective upon execution, between the Office of Muskegon County Corporate Counsel and the Muskegon County Prosecutor's office concerning backup services, and shall provide as follows:

1. The Muskegon County Prosecutor's office will make available the backup services of Assistant Prosecutor Terrence E. Dean. The Prosecutor, however, shall from time-to-time designate one (1) or more Assistant Prosecutors to assist Mr. Dean in legal matters involving the County. It is understood however that the Assistant Prosecutor or his designee shall report directly to Corporate Counsel as to such matters and shall keep and maintain time records, which records must be provided to Corporate Counsel as directed by Corporate Counsel. Corporate Counsel shall thereafter, on a monthly basis, provide a separate line-item expense billing of all charges from the Prosecutor's Office to be submitted to the Administrator for review and approval prior to payment in accordance with standard County billing procedures, it being expressly understood that this billing practice shall conform with Paragraph VIII, "Miscellaneous Financial" of the Corporate Counsel Contract.

2. Mr. Dean will work with the Office of Corporate Counsel on assignment and under the direction of the Office of Corporate Counsel.

3. It is expressly understood in providing this backup service that Assistant Prosecutor Dean will be responsible to and report directly to the Office of Corporate Counsel and that the Office of Corporate Counsel will collectively utilize the services of designated Assistant Prosecutors for up to twenty (20) hours per week. In the event that Corporate Counsel is unable to perform representation of the County or one of its Departments due to a conflict of interest, the Prosecutor shall report directly to the County Administrator as to such matters.

4. It is expressly understood that by the execution of this Agreement that any communications, research or other legal activities undertaken by Assistant Prosecutor Dean on behalf of the Office of Corporate Counsel shall be considered the work product of the Office of Corporate Counsel and subject to all of the usual limitations as applicable to the attorney-client privilege, it being clearly understood that when serving as support for the Office of Corporate Counsel that he is working on behalf of the Muskegon County Board of Commissioners and not the Office of the Prosecutor.

5. The Parties to this Agreement agree that there are some areas of specialty that may be routinely assigned to the designated Assistant Prosecutor and that the parties will in good faith explore and establish those areas of specialty that will be handled on a routine basis by the designated Assistant Prosecutor.

6. It is further expressly understood that the Board reserves the right to terminate this relationship at any time by majority vote.

7. It is understood that any work performed by a designated Assistant Prosecutor is the work product of the County and subject to the rules of attorney-client privilege. These rules, however, do not bar a designated Assistant Prosecutor from discussing his or her work with the Prosecutor so that the Prosecutor can perform his administrative and supervisory duties as Prosecutor and so that he can comply with this Letter of Understanding. Under such circumstances, the Prosecutor shall also be considered an attorney for the County and shall honor the rules on work product and confidentiality that might otherwise apply to any disclosure made by a designated Assistant Prosecutor to the Prosecutor. The Prosecutor also agrees that he will not interfere with the work assignments made by the Office of Corporate Counsel to any designated Assistant Prosecutor under the terms and conditions of this Letter of Understanding.

COUNTY OF MUSKEGON

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson  
Board of County Commissioners

OFFICE OF THE PROSECUTING ATTORNEY

Dated: \_\_\_\_\_

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

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Terrence E. Dean  
Assistant Prosecutor

WILLIAMS HUGHES, PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Theodore N. Williams, Jr. on behalf  
of Law Firm

# REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Full Board		BUDGETED    NON-BUDGETED    PARTIALLY BUDGETED N/A		
REQUESTING DEPARTMENT Administration		COMMITTEE DATE January 29, 2013		REQUESTOR SIGNATURE
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
In accordance with Muskegon County Board of Commissioners Rule XVI-Amendments to Muskegon County Board Rules, notice is hereby given that the Muskegon County Board of Commissioners is proposing amendments to the Rules of the Muskegon County Board of Commissioners. The proposed amendments to these rules will be on the agenda of the February 5, 2013, Human Resources Committee for review and recommendation to the Full Board on February 12 <sup>th</sup> , 2013.				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
Move that the Notice of Proposed Amendments to the Muskegon County Board of Commissioners' Rules be made a part of the official Board minutes.				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE &amp; MANAGEMENT ANALYSIS:</u>		
		Recommend Approval		
<u>CORPORATE COUNSEL ANALYSIS:</u>		<u>ADMINISTRATOR RECOMMENDATION:</u>		
		approval BBAH		
AGENDA DATE:    AGENDA NO.:    BOARD DATE:    PAGE NO.				
1/29/13		1/29/13		16