

# *M u s k e g o n    C o u n t y*

## *Board of Commissioners*

*Kenneth Mahoney, Chairman*  
*Charles Buzzell*  
*Lew Collins*  
*James Derezinski*  
*Marvin Engle*  
*Bill Gill*

*Charles Nash, Vice-Chairman*  
*Louis A. McMurray*  
*Robert Scolnik*  
*I. John Snider II*  
*Roger C. Wade*

*Board Minutes may be found on the web at <http://co.muskegon.mi.us/clerk>*

### **Full Board Meeting**

**May 12, 2009**  
**3:30 P.M.**

### **Chairman Kenneth Mahoney, Presiding**

The Regular Meeting of the Board of Commissioners was called to order by Chairman Mahoney. The invocation was given by Chairman Mahoney followed by the pledge of Allegiance recited in unison.

### **Roll Call**

Present:        Buzzell, Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade

Absent:        None

Also Present: County Administrator Bonnie B. Hammersley, Corporate Counsel Ted Williams, County Clerk Nancy A. Waters, Secretary to the Administrator Lisa Chalko

### 2009-234     **APPROVE AGENDA**

Moved by Snider, seconded by Wade, to approve the Agenda.

**Motion Carried**

### 2009-235     **APPROVE THE MINUTES OF THE FULL BOARD OF APRIL 28, 2009**

Moved by Engle, seconded by Wade, to approve minutes of the Full Board of April 28, 2009.

**Motion Carried**

### 2009-236     **COMMUNICATIONS**

Moved by Engle, seconded by Collins, to receive and place on file the Communication from Huron County Resolution NO. 09-69C.

**Motion Carried**

2009-237 **WAIVE THE HIRING FREEZE AND ALLOW THE CIRCUIT COURT FAMILY  
DIVISION TO FILL THE VACANT ACCOUNT CLERK II POSITION**

CPS09/05-29

The Courts and Public Safety Committee recommends, moved by Gill, seconded by Collins, to waive the hiring freeze and allow the Circuit Court, Family Division to fill the vacant Account Clerk II position, #G02014.

Roll Call

Ayes: Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell

Nays: None

**Motion Carried**

2009-238 **AUTHORIZE THE PROSECUTOR TO APPLY FOR THE FY 2010 CRIME  
VICTIMS RIGHTS GRANT**

CPS09/05-30

The Courts and Public Safety Committee recommends, moved by Gill, seconded by Collins, to authorize the Prosecutor to apply for the FY 2010 Crime Victims Rights grant from the Michigan Department of Community Health, for the purpose of continuing funding for the Crime Victims Rights Unit of the Prosecutor's Office, in the amount of \$160,577.

Roll Call

Ayes: Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell

Nays: None

**Motion Carried**

2009-239 **GRANT PERMISSION FOR THE SHERIFF'S OFFICE TO DO AN RFP FOR  
INMATE HEALTH CARE AND PHARMACY SERVICES**

CPS09/05-31

The Courts and Public Safety Committee recommends, moved by Gill, seconded by Collins, to grant permission for the Sheriff's Office to do an RFP for inmate health care and pharmacy services.

Roll Call

Ayes: Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell

Nays: None

**Motion Carried**

2009-240 **AUTHORIZE THE SHERIFF'S OFFICE TO ACCEPT THE MARINE SAFETY GRANT FOR EQUIPMENT**

CPS09/05-32

The Courts and Public Safety Committee recommends, moved by Gill, seconded by Collins, to authorize the Sheriff's Office to accept the Marine Safety Grant for equipment in the amount of \$7,000 for January 1, 2009 to September 30, 2009 and amend the budget accordingly.

Roll Call

Ayes: Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell

Nays: None

**Motion Carried**

2009-241 **GRANT PERMISSION TO THE SHERIFF'S OFFICE TO PURCHASE A 2006 PWC**

CPS09/05-33

The Courts and Public Safety Committee recommends, moved by Gill, seconded by Collins, to grant permission to the Sheriff's Office to purchase a 2006 PWC from Harbor Sports for \$7,002.00.

Roll Call

Ayes: Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell

Nays: None

**Motion Carried**

2009-242 **AMEND THE FOLLOWING MUSKEGON COUNTY BOARD RULES**

HR09/05 - 36

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to amend the following Muskegon County Board Rules:

1. Definitions Section, Rule 1, Sessions and Meetings, Section 1, Definitions
2. Rule 1, Sessions and Meetings, Section 10, Notice of Meetings
3. ~~Rule II, Board Officers, Section 1, Chairperson~~
4. Rule III, Quorum, Section 1, Definition
5. Rule IV, Order of Business, Section 1, Agenda Format
6. Rule V, Manner of Voting and Majority Required, Section 1, Roll Call Vote
7. Rule XV, Committees, Section 1, Standing Committees, Subsection A
8. Rule XVI, Departments, Section 3, Emergency Services
9. Rule XVI, Departments, Section 4, Departments

(Continued)

2009-242 **AMEND THE FOLLOWING MUSKEGON COUNTY BOARD RULES**

10. Rule XVI, Departments, Section 6, Discipline and Removal, New Language
11. Rule XX, County Administrator, Section 2, Residence Requirements
12. Rule XX, County Administrator, Section 3, Powers and Duties, Subsection B
13. Rule XX, County Administrator, Section 3, Powers and Duties, Section 2, Discipline and Removal
14. Rule XXI, Corporate Counsel, Section 2, Residence Requirements

Roll Call

Ayes: Derezinski, Engle, Mahoney, McMurray, Scolnik, Snider, Wade, Buzzell, Collins

Nays: Gill, Nash

**Motion Carried**

2009-243 **DELETE THE PROPOSED CHANGE TO THE MUSKEGON COUNTY BOARD RULE II**

HR09/05 - 36a

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to delete the Proposed Change to the Muskegon County Board Rule II, Board of Officers, Section 1, Chairperson.

Roll Call

Ayes: Derezinski, Engle, Mahoney, Scolnik, Snider, Wade, Buzzell, Collins

Nays: Gill, McMurray, Nash

**Motion Carried**

2009-244 **REVISE THE PROPOSED CHANGE TO THE MUSKEGON COUNTY BOARD RULE XV, COMMITTEES, SECTION 1**

HR09/05 - 36b

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to revise the Proposed Change to the Muskegon County Board Rule XV, Committees, Section 1, Standing Committees, Subsection A to read: The Chairperson of the County Board of Commissioners shall, by the first regularly scheduled Full Board meeting following the Organizational Meeting of the Board, designate the regular committees of the Board, their composition, and designate the chairperson and vice chairperson as a membership of each committee for the ensuing year. Such appointments are subject to the approval of the majority of the commission.

(Continued)

2009-244 **REVISE THE PROPOSED CHANGE TO THE MUSKEGON COUNTY BOARD RULE XV, COMMITTEES, SECTION 1**

Roll Call

Ayes: Derezinski, Engle, Mahoney, McMurray, Scolnik, Snider, Wade, Buzzell, Collins

Nays: Gill, Nash

**Motion Carried**

2009-245 **APPROVE THE CONTINUATION OF THE FY 2007/2008 CONTRACT FOR COMMUNITY LIVING SUPPORTS WITH HERITAGE HOMES, INC.**

HR09/05 - 37

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to approve the continuation of the FY 2007/2008 contract for Community Living Supports with Heritage Homes, Inc., through June 30, 2009.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins

Nays: None

**Motion Carried**

2009-246 **AUTHORIZE THE COMMUNITY MENTAL HEALTH DIRECTOR TO AMEND THE CURRENT CONTRACT WITH HGA SUPPORT SERVICES TO INCLUDE THE PROVISION OF HOME AND COMMUNITY ACTIVITY PROGRAMMING AT THE LILAC STREET HOME**

HR09/05 - 38

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to authorize the Community Mental Health Director to amend the current contract with HGA Support Services to include the provision of Home and Community Activity programming at the Lilac Street home at a cost of \$23.21 per consumer per day, with a cap of \$17,000 for the fiscal year.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins

Nays: None

**Motion Carried**

2009-247 **AUTHORIZE THE COMMUNITY MENTAL HEALTH DIRECTOR TO SIGN A CONTRACT WITH MOKA CORPORATION FOR PLACEMENT SERVICES AND OPERATION OF SPECIALIZED RESIDENTIAL SERVICES**

HR09/05 - 39

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to authorize the Community Mental Health Director to sign a contract with MOKA Corporation for placement services and operation of specialized residential services for the period of October 1, 2009 through September 30, 2010. MOKA will operate two homes; the first for four people at a per diem rate of \$479.56 for each individual for the period of October 1, 2009 through September 30, 2010, and the second home for four people at a per diem rate of \$751.74 for each individual for the period October 1 through March 31, 2010, decreasing to a per diem of \$513.90 for the period of April 1, 2009 through September 30, 2010.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins

Nays: None

**Motion Carried**

2009-248 **APPROVE AMENDMENT NO. 2 OF THE FY08/09 CPBC AGREEMENT**

HR09/05 - 40

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to approve Amendment No. 2 of the FY08/09 CPBC agreement, subject to final review and approval by Corporate Counsel, with the Michigan Department of Community Health, with no effect on County General Funds, and further authorize the Public Health Director to sign the amendment.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins

Nays: None

**Motion Carried**

2009-249 **ALLOW PUBLIC HEALTH TO ESTABLISH A NEW SEASONAL HEALTH EDUCATOR POSITION**

HR09/05 - 41

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to allow Public Health to establish a new Seasonal Health Educator position, job classification to be determined by Human Resources, at a pay rate of \$16/hr; further move to delete one vacant Public Health Educator Full Time position (position N57005).

(Continued)

2009-249 **ALLOW PUBLIC HEALTH TO ESTABLISH A NEW SEASONAL HEALTH  
EDUCATOR POSITION**

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell,  
Collins

Nays: None

**Motion Carried**

2009-250 **AUTHORIZE THE PUBLIC HEALTH DEPARTMENT TO AMEND ITS FY09  
BUDGET**

HR09/05 - 42

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to authorize the Public Health Department to amend its FY09 budget (revenue and expenditures) from \$6,819,780 to \$6,715,313 to include grant funding changes, program line item adjustments, and staff/funding transfers with no change in the general fund appropriation.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell,  
Collins

Nays: None

**Motion Carried**

2009-251 **ACCEPT THE PROPOSED RECOMMENDATIONS TO THE VECTOR  
CONTROL LATE LICENSE FEE CHANGES**

HR/09/05 - 43

The Human Resources Committee recommends, moved by Buzzell, seconded by Snider, to accept the proposed recommendations to the Vector Control late license fee changes to include a penalty fee of \$35, plus regular license fee, for licenses purchased between March 2 and April 30; and total license fee of \$125 for licenses purchased May 1 through November 30.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Scolnik, Snider, Wade, Buzzell,  
Collins

Nays: Nash

**Motion Carried**

2009-252 **APPROVE PAYMENT OF THE ACCOUNTS PAYABLE COVERING THE PERIOD OF APRIL 15, 2009 THROUGH MAY 1, 2009**

WM09/05-48

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to approve payment of the accounts payable of \$3,468,762.13 covering the period of April 15, 2009 through May 1, 2009, as presented by the County Clerk.

Roll Call

Ayes: Engle, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: Gill

**Motion Carried**

2009-253 **APPROVE THE FY2009 TRUTH-IN-TAXATION HEARING SCHEDULE**

WM09/05-49

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to approve the FY2009 Truth-in-Taxation Hearing Schedule.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**

2009-254 **CONTINUE COLLECTION OF THE LOCAL 9-1-1 SURCHARGE AT \$0.34 AS APPROVED BY MICHIGAN PUBLIC SERVICE COMMISSION**

WM09/05-50

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to continue collection of the local 9-1-1 surcharge at \$0.34 as approved by Michigan Public Service Commission U-15489 for the time period July 1, 2009 to June 30, 2010, and to provide proper notification of this to the State 9-1-1 Committee.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**



2009-255 **ACCEPT THE LOW QUOTE FROM VANDERVEN CONSTRUCTION FOR  
SIDEWALK AND MAIN ENTRANCE IMPROVEMENTS AT HERITAGE  
LANDING**

WM09/05-51

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to accept the low quote from VanderVen Construction of \$21,868 for sidewalk and main entrance improvements at Heritage Landing and to pay for these improvements from the fund balance reserve set aside for such purpose.

Roll Call

Ayes: Engle, Mahoney, McMurray, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: Gill, Nash

**Motion Carried**

2009-256 **APPROVE CHANGE ORDER NO. 01 TO THE MUSKEGON QUALITY  
BUILDERS CONTRACT FOR THE TREASURER/EQUALIZATION/  
REGISTER OF DEEDS RENOVATION PROJECT**

WM09/05-52

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to approve Change Order No. 01 to the Muskegon Quality Builders contract for the Treasurer/  
Equalization/Register of Deeds renovation project in the amount of \$43,508 for a new contract total of \$523,208.00.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**

2009-257 **AUTHORIZE STAFF TO ACCEPT THE PROPOSAL FROM KENT  
COMMUNICATIONS, INC., FOR THE PICK UP AND PROCESSING OF US  
MAIL**

WM09/05-53

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to authorize staff to accept the proposal from Kent Communications, Inc., for the pick up and processing of US mail, and to allow the County to use KCI's discounted postage rates.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**

2009-258 **APPROVE THE INCREASE IN THE CONTRACT WITH TYSMAN  
SNOWPLOWING FOR 2008/2009 PLOWING SERVICES**

WM09/05-54

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to approve the increase in the contract with Tysman Snowplowing for 2008/2009 plowing services by \$20,572 as follows: John Halmond Center - \$6,000; CMH Peck Street - \$2,501; CMH Wesley Roberts - \$2,501; Fairgrounds - \$6,669; and Hazmat Hangar - \$2,901 totaling \$20,572 for a new contract total of \$59,078.00.

Roll Call

Ayes: Engle, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: Gill

**Motion Carried**

2009-259 **ALLOW THE JUVENILE DETENTION CENTER PERMISSION TO APPLY  
FOR THE 2010 EQUIPMENT ASSISTANCE GRANTS**

WM09/05-55

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to allow the Juvenile Detention Center permission to apply for the 2010 Equipment Assistance Grants for School Food Authorities through the State of Michigan Department of Education.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**

2009-260 **PROPOSE A RESOLUTION IN SUPPORT OF MUSKEGON BIKE TIME  
EVENT**

WM09/05-56

The Ways and Means Committee Recommends, moved by Collins, seconded by Engle, to propose a Resolution in support of Muskegon Bike Time Event being held July 17 - 19, 2009.

Roll Call

Ayes: Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski

Nays: None

**Motion Carried**

## CHAIRMAN'S REPORT/COMMITTEE LIAISON REPORTS

Commissioner Snider reported that the PA2 funds check has been received by the County and 50% has been forwarded to the LCC with the understanding that it will be returned within 30 days.

Commissioner Engle reported regarding the Road Commission.

Chairman Mahoney noted the MAC Legislative Update of April 24, 2009, was included in agenda packets.

### 2009-261 APPROVE PERSONNEL RULES COMMITTEE APPOINTMENTS

The Chairman recommends, moved by Engle, seconded by Derezinski, to approve the following Personnel Rules Committee Appointments: Commissioners Scolnik, Snider, Gill, Buzzell and Collins.

#### **Motion Carried**

Full Board Planning Session scheduled for May 26, at 11:00 a.m. re: Budget, long-term strategy, place to be determined.

## ADMINISTRATOR'S REPORT

### 2009-262 AUTHORIZE THE COUNTY CLERK TO PROCEED WITH THE FILE PACKING AND MOVING PROJECT WITH LAKESHORE DOCUMENT SERVICES

The Administrator recommends, moved by Derezinski, seconded by Snider, to authorize the County Clerk to proceed with the file packing and moving project with Lakeshore Document Services at a cost not to exceed \$2,498 with all costs to be paid from the Public Improvement Fund.

Roll Call

Ayes: Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski, Engle

Nays: None

#### **Motion Carried**

Commissioner McMurray asked that the topic of record storage be added to the planning session agenda.

2009-263 **AUTHORIZE THE CHAIRMAN OF THE COUNTY BOARD OF COMMISSIONERS TO ENTER INTO AND SIGN THE ATTACHED INTER LOCAL AGREEMENTS**

The Administrator recommends, moved by Snider, seconded by Nash, to authorize the Chairman of the County Board of Commissioners to enter into and sign the attached Inter Local Agreements between the five jurisdictions and the County for the submission of the JAG grant.

Commissioner McMurray asked that the address for City of Muskegon Heights be corrected to read: 2724 Peck Street.

Roll Call

Ayes: Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski, Engle, Gill

Nays: None

**Motion Carried**

**Old Business**

Commissioner Snider met with Judge Ruck, Sheriff Roesler and Prosecutor Tague to consider re-focusing the Criminal Justice Coordinating Council originally intended to provide support for the jail millage. A number of changes are coming from the state that may need to be addressed.

Commissioner Scolnik reviewed a recently distributed memo regarding the sesquicentennial budget.

2009-264 **DONATE \$1000 FROM THE FLOWER FUND TOWARD THE SESQUICENTENNIAL**

Moved by Scolnik, seconded by Snider, to donate \$1000 from the flower fund toward the sesquicentennial.

Discussion ensued regarding the use of flower fund monies. Commissioner Gill expressed his opposition to the flower fund deduction and the contribution in the proposed motion.

Roll Call

Ayes: McMurray, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski, Engle, Mahoney

Nays: Nash, Gill

**Motion Carried**

Commissioner Scolnik asked Corporate Counsel Williams to review an agreement with Brian Chapman regarding his work on the Sesquicentennial. Mr. Chapman was given the agreement for his signature which, once signed would be presented in a motion.

2009-265 **APPROVAL OF ATTACHED COPYRIGHT AND TRADEMARK LICENSE AGREEMENT AND WORK MADE FOR HIRE AGREEMENT BETWEEN THE COUNTY OF MUSKEGON AND BRIAN CHAPMAN**

Moved by Scolnik, seconded Collins, for approval of attached copyright and trademark license agreement and work made for hire agreement between the County of Muskegon and Brian Chapman.

2009-266 **SUSPEND THE RULES TO ALLOW PUBLIC COMMENT**

Moved by Engle, seconded by Wade, to suspend the rules to allow public comment.

**Motion Carried**

Brian Chapman addressed the Board noting he will be signing the agreement and is satisfied and looking forward to the events.

Voice Vote on 2009-265

**Motion Carried**

**New Business**

None.

**Public Participation**

Sheriff Roesler noted this is Law Enforcement week and memorial will take place at 5:30 Wednesday, May 13 on the front lawn of the County Building. All invited.

2009-267 **GO INTO CLOSED SESSION RE: PENDING LITIGATION**

Moved by Derezinski, seconded by Engle, go into Closed Session re: Pending Litigation.

Roll Call

Ayes: Nash, Scolnik, Snider, Wade, Buzzell, Collins, Derezinski, Engle, Mahoney, McMurray

Nays: Gill

**Motion Carried**

Audience dismissed and the Full Board went into Closed Session at 4:08 p.m.

Returned to Open Session at 4:42 p.m.

Meeting adjourned at 4:42 p.m.

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Nancy A. Waters, County Clerk

NAW/jmp

**COPYRIGHT AND TRADEMARK LICENSE AGREEMENT  
AND WORK MADE FOR HIRE AGREEMENT  
BETWEEN THE COUNTY OF MUSKEGON  
AND BRIAN CHAPMAN**

This Agreement (hereinafter, "Agreement") is made by and between the **County of Muskegon**, a political subdivision of the State of Michigan (hereinafter, "County"), having its principal place of business at 990 Terrace Street, Muskegon, Michigan 49442, and **Brian Chapman**, who resides at 309 Yuba Street, Muskegon, MI 49442 (hereinafter, "Chapman").

WHEREAS, the County of Muskegon will celebrate its Sesquicentennial in 2009; and

WHEREAS, Brian Chapman has volunteered to market and promote the Muskegon County Sesquicentennial; and

WHEREAS, Brian Chapman's activities are independent from, and not as an agent of, the County of Muskegon; and

WHEREAS, Chapman wishes to obtain a license from the County of Muskegon, so that his use of certain trademarks and copyrighted works of the County of Muskegon do not trigger an infringement lawsuit; and

WHEREAS, the County and Chapman have agreed that Chapman will not have to pay royalties to the County of Muskegon, for the use of its trademarks or copyrighted works; and

WHEREAS this Agreement does not create any employment or agency relationship between Chapman and the County;

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

1. **OWNERSHIP OF DOCUMENTS, IMAGES, MUSICAL COMPOSITIONS, RECORDINGS, and OTHER CREATIVE WORKS.** This Agreement is a written instrument, signed by County and by Chapman, for purposes of the Copyright Act of the United States and the copyright laws of any other country. County and Chapman agree that the copyright for any and all works of authorship (documents, pictures and graphic images, musical compositions, phonorecords and recordings, or any other creative works), prepared by Chapman under this Agreement, or as part of the marketing of the Muskegon County Sesquicentennial, or as a result of this Agreement, or in the course of performance of this Agreement, in any medium of expression, shall belong exclusively to County. County shall, for purposes of 17 U.S.C. § 201(a) and the copyright laws of any other country, be deemed the sole and exclusive author of any and all such works. If and to the extent necessary, any and all such works shall be deemed works made for hire, prepared for County and belonging exclusively to it. If necessary to secure County's exclusive ownership of any or all such copyrights, Chapman shall perform all actions and execute all documents required to transfer any and all such rights exclusively to County, including each and all of the exclusive rights identified in Section 106 of the Copyright Act.

County shall have the unrestricted authority to publish, disclose, distribute, otherwise use in whole or in part, or to prepare derivative works based on, any reports, data, documents or other

works or materials prepared under this Agreement.

2. **OWNERSHIP OF TRADEMARKS, SERVICE MARKS, LOGOS, SLOGANS.** All logos, slogans, trademarks, and service marks used or coined by Chapman, as depicted in the attached exhibit, for, or in connection with, the marketing of the Muskegon County Sesquicentennial, shall belong exclusively to Chapman. The list and type of work so depicted may be amended by the County of Muskegon.

3. **GRANT OF TRADEMARK LICENSE.** The County of Muskegon hereby grants a temporary, revokable, exclusive, assignable, royalty-free license to Chapman, to use and employ the following trademarks or service marks, on or in connection with any marketing materials for the Muskegon County Sesquicentennial:

A. Any marks or logos depicted in the attached exhibit(s), and no others.

4. **ROYALTIES.** Chapman shall not be required to pay royalties to the County of Muskegon in exchange for use of the County of Muskegon's copyrighted works, trademarks, and service marks, licensed under this Agreement.

5. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To County: Theodore N. Williams, Jr.  
Muskegon County Corporate Counsel  
120 W. Apple Avenue  
P.O. Box 599  
Muskegon, MI 49443-0599

To Chapman: Brian Chapman  
309 Yuba Street  
Muskegon, MI 49442

or at such other address or to such other person that the parties may from time-to-time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the United States mail.

6. **TERM.** Unless the Agreement is earlier renewed or terminated, the license granted in Paragraph 3 of this Agreement shall commence on March 31, 2009, and shall expire on December 31, 2009.

7. **INDEMNIFICATION.** To the fullest extent permitted by law, Chapman shall defend, indemnify, and hold harmless the County, its subsidiaries, departments, divisions, and agencies and their respective officials, officers, directors, employees, and agents from and against any and all liability, litigation, causes of action, and claims, by whomsoever brought or alleged, and regardless of the legal theories upon which based, and from and against all losses, costs, expenses, and fees and expenses of attorneys and expert witnesses resulting therefrom on account of, relating to, or arising out of bodily injury or death of any person, or on account of damage to property, including loss of use thereof, loss of data, or other harm (including, but not limited to, alleged infringement of



copyright, trademark, or other intellectual property) arising or allegedly arising out of or resulting from the marketing activities contemplated by this Agreement. The foregoing indemnity of the County shall include, but is not limited to, claims alleging or involving the negligence of Chapman or Chapman's subcontractors, or the joint negligence of Chapman, Chapman's subcontractors, and/or the County, as well as claims alleging or involving the sole negligence of the County, but shall not extend to liability found by way of final judgment to have resulted from the sole gross negligence of the County.

8. **NONEXCLUSIVE AGREEMENT.** Except insofar as this Agreement expressly provides exclusive rights to Chapman, Chapman understands and agrees that this is not an exclusive Agreement. The limited exclusivity provided in this Agreement shall expire on December 31, 2009.

9. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

10. **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.

11. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

12. **NO WAIVER OF DEFAULT.** No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time-to-time and as often as may be deemed expedient in the sole discretion of County.

13. **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.

14. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in the Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

15. **CHAPMAN IS NOT A COUNTY EMPLOYEE OR AGENT.** Chapman is not and shall not be an employee, representative, or agent of the County of Muskegon, and shall not hold

himself out as such. Violation of this paragraph shall constitute a material breach of this Agreement, and shall terminate any license provided in this Agreement, immediately.

16. **NO THIRD-PARTY BENEFICIARY.** No person dealing with the County or Chapman shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement.

17. **COMPLIANCE WITH LAW.** Chapman shall, at his sole cost and expense, comply with all local, State, and Federal ordinances, laws, rules, regulations and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Chapman in any action or proceeding against Chapman, whether County be a party thereto or not, that Chapman has violated any such ordinance or statute shall be conclusive of that fact as between Chapman and County.

18. **MICHIGAN LAW.** This Agreement shall be governed by the laws of the State of Michigan any by federal copyright and trademark law. 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.

19. **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.

20. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each such counterparts 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.

21. **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, Chapman hereby warrants that it shall not have breached the terms or conditions of any contract or agreement to which Chapman is obligated, which breach would have a material effect there on.

22. **DISPUTE RESOLUTION; ARBITRATION.** If any party fails to fulfill any term of this Agreement, then the aggrieved party shall give the violating party fifteen (15) days written notice, and an opportunity to cure any alleged breach.

If the party accused of a breach shall fail to cure the alleged breach within the fifteen (15) day notice and cure period, then the aggrieved party may initiate an enforcement action by giving notice to arbitrate under the Commercial Arbitration Rules of the American Arbitration Association, before a single-member arbitration panel. Except for the final arbitral award, the arbitration shall be confidential. The substantially prevailing party in any such arbitration shall recover from the substantially losing party, both all of the prevailing party's attorney fees and costs, as well as the entire fee of the arbitrator. The Arbitration Award shall expressly include terms awarding the substantially prevailing party the recovery of the entire arbitrator's fee as well as the prevailing party's attorney fees and costs, from the substantially losing party.

Any claim filed in court based on this Agreement, prior to the entry of an arbitral award, shall be dismissed in favor of the arbitration procedure set forth in the preceding paragraph. Any arbitral award issued pursuant to this Paragraph 22 shall be subject to enforcement in any court of competent jurisdiction. The substantially prevailing party shall be entitled to recover any and all costs and attorney fees incurred in connection with the enforcement of any such arbitral award.

In Witness Whereof, the parties have executed this Agreement to be effective on the date executed by County.

**COUNTY OF MUSKEGON**

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

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

**BRIAN CHAPMAN**

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

By: \_\_\_\_\_  
Brian Chapman