

**FINAL AGENDA FOR THE COUNCIL MEETING
CITY OF PORTAGE
November 16, 2010**

6:30 p.m. Special Meeting for a presentation concerning an upgrade to the city website.

7:30 p.m. Call to Order.

Invocation: Pastor Paul Naumann of the St. Michael Lutheran Church.

Pledge of Allegiance.

Roll Call.

Proclamations:

A. Approval of the Regular Meeting Minutes of November 2, 2010.

* B. Approval of Consent Agenda Motions.

* C. Communication from the City Manager recommending that City Council approve the Accounts Payable Register of November 16, 2010, as presented.

D. Public Hearings:

E. Petitions and Statements of Citizens.

F. Reports from the Administration:

1. Communication from the City Manager recommending that City Council refer the revised Home Occupation Ordinance recommended by the City Council Neighborhood Revitalization and Engagement Ad Hoc Committee, to the Planning Commission to initiate the amendment process to the Zoning Code.

2. Presentation and report from Police Chief Richard White regarding Portage Police Department cooperative and collaborative law enforcement activities and efforts.

* 3. Communication from the City Manager regarding the 2010 annual Holiday Tree Lighting/Traditional Holiday Celebration – Information Only.

* 4. Communication from the City Manager regarding the October 2010 Summary Environmental Activity Report – Information Only.

* 5. Department Monthly Reports.

G. Communications:

H. Unfinished Business:

* 1. Communication from the City Manager recommending that City Council adopt the Resolution granting the Easement and Right-of-Way Agreement for Ingress and Egress and License Agreement To Locate Personal Property in City Right-of-Way to Duke Barrington Limited Dividend Housing Association Limited Partnership.

* I. Minutes of Boards and Commissions Meetings:

1. Portage Park Board of October 6, 2010.
2. Portage Human Services Board of October 7, 2010.
3. Portage Zoning Board of Appeals of October 11, 2010.
4. Portage Environmental Board of October 13, 2010.
5. Portage Planning Commission of October 21, 2010.

J. Ad Hoc Committee Reports:

K. New Business:

L. Bid Tabulations:

- * 1. Communication from the City Manager recommending that City Council:
 - a. award a two-year contract renewal to Safety National Casualty Corporation, the low bidder, for workers' compensation excess insurance coverage for an annual fee of \$39,567 plus payroll adjustments;
 - b. approve a two-year contract renewal with Eagle Claims Management for workers' compensation third party administration for an annual fee of \$10,268;and authorize the City Manager to execute all documents related to these contract renewals on behalf of the city.
- * 2. Communication from the City Manager recommending that City Council award a contract for a water and wastewater Utility Rate Study to Utility Financial Solutions, LLC, at a cost not to exceed \$35,500 and authorize the City Manager to execute all documents on behalf of the city.
- * 3. Communication from the City Manager recommending that City Council award a contract to Hurley & Stewart, LLC, with the low cost proposal for engineering services related to the 2011 Storm Drainage Improvements and Barberry Avenue Sanitary Sewer Rehabilitation in the amount of \$33,000 and authorize the City Manager to execute all documents on behalf of the city.

M. Other City Matters:

- 1. Statements of Citizens.
- 2. From City Council and City Manager.
- * 3. Reminder of Meetings:
 - a. Wednesday, November 17, 2:30 p.m., Senior Citizen Advisory Board, Portage Senior Center.
 - b. Thursday, November 18, 7:00 p.m., Library Board, Portage District Library.
 - c. Thursday, November 18, 7:00 p.m., Planning Commission, City Council Chambers.
 - d. Monday, November 29, 6:30 p.m., Youth Advisory Committee, City Hall Room #1.
 - e. Wednesday, December 1, 8:15 a.m., Historic District Commission, City Hall Room #2.
 - f. Wednesday, December 1, 6:30 p.m., Park Board, Stuart Manor, Celery Flats.
 - g. Thursday, December 2, 6:30 p.m., Human Services Board, City Hall Room #1.
 - h. Thursday, December 2, 7:00 p.m., Planning Commission, City Council Chambers.

N. Materials Transmitted.

Adjournment.

CITY COUNCIL MEETING SUMMARY

November 2, 2010

CHECK REGISTER

- ◆ Approved the Check Register of November 2, 2010, as presented.

REPORT FROM THE ADMINISTRATION

- ◆ Established the 2011 Schedule of Regular City Council Meetings.

COMMUNICATION

- ◆ Accepted the correspondence from Human Services Board Member Amy Tuley, reappointed William Lenehan to a one year term ending October 1, 2011, and directed the Human Services Board to look at the representation matter with the intent to provide a transition to give the representative on the Metro Transit ADA Local Advisory Committee a full year to plan for and identify who will be transitioning and with the intent that it would be someone who is serving on the Human Services Board.

BID TABULATION

- ◆ Awarded a contract to VarTec, LLC, in the amount not to exceed \$36,420 for the installation of software and hardware upgrades to the transcription capabilities of the Portage Police Department Records Division and Patrol Division, and authorized the City Manager to execute all related documents.

STATEMENTS OF CITY COUNCIL

- ◆ Council expressed frustration over the many political ads that ran throughout this election season, thanked the volunteers and gave a sigh of relief that the election was over.
- ◆ Mayor Strazdas congratulated Councilmember Reid for her recent appointment as Vice President of the Kalamazoo Council of Governments (COG) and thanked the candidates for availing themselves to public service.

COMPLETE MINUTES OF EACH CITY COUNCIL MEETING ARE AVAILABLE ON THE CITY WEBSITE AT PORTAGEMI.GOV, IN CITY HALL AND IN THE DISTRICT LIBRARY. MINUTES OF CITY BOARDS AND COMMISSIONS ARE AVAILABLE ON REQUEST FROM VARIOUS DEPARTMENTS.

CITY COUNCIL MEETING MINUTES FROM NOVEMBER 2, 2010

The Regular Meeting was called to order by Mayor Strazdas at 7:30 p.m.

At the request of Mayor Strazdas, Pastor Daniel Teerman of The Bridge in Portage gave the invocation and the City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Patricia M. Randall, Claudette S. Reid and Terry R. Urban, Mayor Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Also in attendance were City Manager Maurice S. Evans, City Attorney Randall Brown and City Clerk James R. Hudson.

APPROVAL OF MINUTES: Motion by O'Brien, seconded by Reid, to approve the October 19, 2010 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Campbell to read the Consent Agenda. Motion by Urban, seconded by Campbell, to approve the Consent Agenda motions as presented. Upon a roll call vote, motion carried 7 to 0.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF NOVEMBER 2, 2010:** Motion by Urban, seconded by Campbell, to approve the Accounts Payable Register of November 2, 2010. Upon a roll call vote, motion carried 7 to 0.

REPORT FROM THE ADMINISTRATION:

* **2011 CITY COUNCIL MEETING SCHEDULE:** Motion by Urban, seconded by Campbell, to establish the 2011 Schedule of Regular City Council Meetings. Upon a roll call vote, motion carried 7 to 0.

COMMUNICATION:

REPRESENTATIVE TO METRO TRANSIT ADA LOCAL ADVISORY COMMITTEE: Mayor Strazdas asked if anyone had any questions of clarification and Councilmember O'Brien asked if discussion by the Council Advisory Committee that oversees the Council Committees would be appropriate. When Mayor Strazdas deferred to Councilmember Reid, she indicated that it would be an option to consider. Councilmember Reid further explained that she is the official representative from the City of Portage, that Bill Lenehan was unable to attend the meeting, is the Vice Chair of the Committee and is still interested in serving as the representative on the Metro Transit ADA Local Advisory Committee. She also indicated that she discusses the activities of the Metro Transit ADA Local Advisory Committee with him a couple of times a year and Mr. Lenehan expressed his intent to attend each Human Services Board Meeting and provide a report.

In response to Councilmember O'Brien, Councilmember Reid indicated that the City of Portage can send anyone as a representative and Mr. Lenehan served because the Human Services Board reviews transportation issues and the Metro Transit ADA Local Advisory Committee has no authority – they can not vote for funding or set policy – and Mr. Lenehan provides a direct connection for the city with the Metro Transit ADA Local Advisory Committee through the Human Services Board.

Mayor Pro Tem Sackley indicated that the situation is awkward for City Council, the Human Services Board and for Mr. Lenehan. He pointed out that his term was limited because of Council Policy; that he is the only representative the city has had on this committee; that what was done in 2003 doesn't appear to be reflected in Council Policy because it has nothing to do with appointment to citizen advisory boards, only that it was the path used in 2003 as the source of that appointment; and, the letter from former Human Services Board Chair Amy Tuley reads that at the time of Mr. Lenehan's request,

she was Chair of the Board, but because she is no longer the Chair, she is speaking as an individual who is not a member of the Human Services Board, so it is possible that the Board has not taken this matter up for discussion as it seemed logical to them that Mr. Lenehan would continue to serve. He then offered two options by saying that City Council could reappoint Mr. Lenehan to the Human Services Board where there is an opening, or do what was done in 2003 and appoint someone who is interested in serving Metro Transit ADA Local Advisory Committee from the Human Services Board, if the criteria at that time was that they be on the Human Services Board. He spoke in support of Mr. Lenehan owing to the fact that he served on the Human Services Board for ten years and is interested in continuing to serve on the Metro Transit ADA Local Advisory Committee.

In answer to Councilmember O'Brien, Councilmember Reid indicated that appointment of a City Council Representative on the Metro Transit ADA Local Advisory Committee would be considered Friday, November 12 beginning at 12:00 noon and Saturday November 13, beginning at 8:00 a.m., Special Meeting of the City Council for the purposes of discussion of goals and objectives, at the Gilmore House on the campus of Western Michigan University, Kalamazoo. Councilmember Reid asked that City Council not take action and ask the Human Services Board to review this whole issue and provide a recommendation.

Discussion followed regarding an end date for Mr. Lenehan's serving on the Metro Transit ADA Local Advisory Committee. Councilmember Urban expressed his respect for Mr. Lenehan and appreciation for his service, but indicated that it is appropriate to have a Human Services Board Member as Representative on the Metro Transit ADA Local Advisory Committee. He offered that City Council could waive their policy and have him serve as Representative on the Metro Transit ADA Local Advisory Committee, but he preferred to have the Human Services Board provide a recommendation. Discussion followed.

Motion by Sackley, seconded by O'Brien, to accept the correspondence from Human Services Board Member Amy Tuley and reappoint William Lenehan to a one year term ending October 1, 2011. Councilmember Reid offered the following amendment to the motion: to direct the Human Services Board to look at the issue with the intent to provide a transition to give the representative on the Metro Transit ADA Local Advisory Committee a full year to plan for and identify who will be transitioning and with the intent that it would be someone who is serving on the Human Services Board. Mayor Pro Tem Sackley and Councilmember O'Brien concurred with the amendment to the motion. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

*** MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes for the following boards and commissions:

Portage Environmental Board of September 8, 2010.

Portage Senior Citizen Advisory Board of September 15, 2010.

Portage Zoning Board of Appeals of September 20, 2010.

Portage Board of Education Special and Regular Business Meeting of September 27, Policy Governance Session of October 4 and Special Meeting and Committee of the Whole Work Session of October 11, 2010.

Portage Planning Commission of October 7, 2010.

BID TABULATION:

*** PURCHASE OF DIGITAL RECORDING AND TRANSCRIPTION SOFTWARE AND HARDWARE:** Motion by Urban, seconded by Campbell, to award a contract to VarTec, LLC, in the amount not to exceed \$36,420 for the installation of software and hardware upgrades to the transcription capabilities of the Portage Police Department Records Division and Patrol Division, and authorize the City Manager to execute all related documents. Upon a roll call vote, motion carried 7 to 0.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL: Council expressed frustration over the many political ads that ran throughout this election season, thanked the volunteers and gave a sigh of relief that the election was over.

Mayor Strazdas congratulated Councilmember Reid for her recent appointment as Vice President of the Kalamazoo Council of Governments (COG) and thanked the candidates for availing themselves to public service.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 7:59 p.m.

James R. Hudson, City Clerk

***Indicates items included on the Consent Agenda.**

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 8, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: Accounts Payable Register

ACTION RECOMMENDED: That City Council approve the Accounts Payable Register of November 16, 2010 as presented.

Attached please find the Accounts Payable Register for the period October 24, 2010 through November 6, 2010, which is recommended for approval.

c: Daniel S. Foecking, Finance Director

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
10/29/2010	273597	A T & T LONG DISTANCE	4060	134.57
10/29/2010	273598	A-1 SIGNS	2873	192.00
10/29/2010	273599	ACE PARKING LOT STRIPING, INC.	459	300.00
10/29/2010	273600	ADMIRAL LOCK & KEY SERVICE	104	75.00
10/29/2010	273601	ALL-PHASE ELECTRIC SUPPLY CO.	108	607.26
10/29/2010	273602	ALLEGRA PRINT & IMAGING	533	2,030.10
10/29/2010	273603	J. ALLEN & CO. INC.	67	610.00
10/29/2010	273604	ANIMAL REMOVAL SERVICE, LLC	3428	800.00
10/29/2010	273605	ANY CUTTING & WELDING	3347	1,966.00
10/29/2010	273606	TODD ARBANAS ENTERPRISES INC.	1704	740.00
10/29/2010	273607	ATTORNEYS TITLE AGENCY LLC	999999	1,475.48
10/29/2010	273608	AUTOMATIC DATA PROCESSING	3305	1,155.24
10/29/2010	273609	BAILEY CONTRACTORS INC., ROBER	771	6,156.44
10/29/2010	273610	BAILEY CONTRACTORS INC., ROBER	771	10,950.00
10/29/2010	273611	BALKEMA EXCAVATING, INC.	130	3,400.00
10/29/2010	273612	BALKEMA EXCAVATING, INC.	130	24,652.50
10/29/2010	273613	BANK OF NEW YORK MELLON	3939	450.00
10/29/2010	273614	BARRETT'S SMOKEHOUSE	4619	150.00
10/29/2010	273615	BATTERIES PLUS	3495	375.28
10/29/2010	273616	BDO USA, LLP	136	1,000.00
10/29/2010	273617	BIG ROCK SPORTS, LLC	4606	215.32
10/29/2010	273618	BILL'S LOCK SHOP, INC.	146	21.00
10/29/2010	273619	BLUJ CROSS/BLUE SHIELD OF MICH	642	135,907.42
10/29/2010	273620	BORGESS HEALTH ALLIANCE	151	85.00
10/29/2010	273621	BREAKAWAY BICYCLES	1356	63.48
10/29/2010	273622	BREATHING AIR SYSTEMS	4466	261.00
10/29/2010	273623	BRENNER OIL CO.	3545	9,967.17
10/29/2010	273624	BRONNER'S CHRISTMAS DECORATION	154	484.83
10/29/2010	273625	BRONSON METHODIST HOSPITAL	156	1,700.00
10/29/2010	273626	BYHOLT INC.	68	3,137.89
10/29/2010	273627	C D W GOVERNMENT, INC.	2690	186.19
10/29/2010	273628	C M P DISTRIBUTORS, INC.	3556	465.00
10/29/2010	273629	CAMPBELL AUTO SUPPLY	437	130.83
10/29/2010	273630	CARLETON EQUIPMENT CO.	168	1,290.00
10/29/2010	273631	CHARTER COMMUNICATIONS	3080	11.44
10/29/2010	273632	CINTAS CORP.	2206	509.61
10/29/2010	273633	CITY OF KALAMAZOO TREASURER	540	199,260.53
10/29/2010	273634	COLLETTE VACATIONS	1935	6,300.00
10/29/2010	273635	COMSTOCK PUBLIC SCHOOLS	1671	66.29
10/29/2010	273636	CONCRETE LIFTERS INC.	4234	350.00
10/29/2010	273638	CONSUMERS ENERGY-BILL PMT CNT	189	35,635.91
10/29/2010	273639	CORNERSTONE OFFICE SYSTEMS	1920	140.70
10/29/2010	273640	CUMMINGS BRIDGEWAY LLC	745	176.39
10/29/2010	273641	CUSTOMIZED CLEANING SERVICES,	3622	700.00
10/29/2010	273642	DEAN TRAILWAYS OF MICHIGAN	3468	1,374.00
10/29/2010	273643	DENOYER BROTHERS, INC.	210	79.23
10/29/2010	273644	DERKS, CAROL A.S.	4319	850.00
10/29/2010	273645	DETROIT SALT CO.	1653	156,974.10
10/29/2010	273646	WRIGHT DICKINSON MOONVANDU	215	3,600.00
10/29/2010	273647	DIESEL INJECTION SERVICE, LLC	1874	548.22
10/29/2010	273648	JACK DOHENY SUPPLIES INC.	69	278.93

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
10/29/2010	273649	DRISENGA & ASSOCIATES, INC.	3277	17,436.00
10/29/2010	273650	DUNSTAN, RUTH OR JAMES	999999	6,521.00
10/29/2010	273651	EMPLOYMENT GROUP, INC.	959	598.00
10/29/2010	273652	ENGINEERED PROTECTION SYSTEMS,	2973	213.00
10/29/2010	273653	F D LAKE COMPANY	985	99.59
10/29/2010	273654	FAWLEY OVERHEAD DOOR, INC.	690	142.00
10/29/2010	273655	FIRST DUE FIRE SUPPLY CO.	4422	46,484.50
10/29/2010	273656	FLETCHER ENTERPRISES	1399	2,370.00
10/29/2010	273657	GORDON WATER SYSTEMS	517	178.50
10/29/2010	273658	W W GRAINGER INC	699	458.15
10/29/2010	273659	GREATER KALAMAZOO FOP LODGE 98	623	4,140.50
10/29/2010	273660	GREATER KALAMAZOO FOP LODGE 98	623	780.00
10/29/2010	273661	GREATER KALAMAZOO UNITED WAY	628	1,125.90
10/29/2010	273662	GREGWARE EQUIPMENT CO.	4397	238.47
10/29/2010	273663	GRIFFIN PEST CONTROL, INC.	598	90.00
10/29/2010	273664	B L HARROUN & SON INC.	124	1,363.11
10/29/2010	273665	HARVEY, WARD & ASSOC, INC	999999	300.00
10/29/2010	273666	HESS, DEREK	999999	205.00
10/29/2010	273667	HOME DEPOT	691	324.62
10/29/2010	273668	HOSPITAL NETWORK HEALTHCARE SE	4482	55.00
10/29/2010	273669	HOUSEWORKS SERVICES, INC.	4566	2,649.00
10/29/2010	273670	HOWARD PRINTING	1974	587.00
10/29/2010	273671	HUDSON, JAMES	532	150.00
10/29/2010	273672	HUNT, MARTY	999999	150.00
10/29/2010	273673	IAAO	999999	335.00
10/29/2010	273674	IERVOLINA, SUSAN	2074	200.00
10/29/2010	273675	INDUSCO SUPPLY CO., INC.	63	823.81
10/29/2010	273676	IRISH AYLES ENTERPRISES, LLC	4143	180.00
10/29/2010	273677	THE IRRIGATOR	2047	2,522.81
10/29/2010	273678	J & J LAWN SERVICE, INC.	457	2,025.45
10/29/2010	273679	KAL CO MEDICAL CONTROL AUTH	735	20.02
10/29/2010	273680	KALAMAZOO COUNTY CLERK	83	5,313.07
10/29/2010	273681	KALAMAZOO COUNTY TREASURER	514	4,926.59
10/29/2010	273682	KALAMAZOO LANDSCAPE SUPPLIES	90	796.00
10/29/2010	273683	KALAMAZOO REGIONAL CHAMBER	3499	5,000.00
10/29/2010	273684	KEHOE, EDWARD J	3783	285.00
10/29/2010	273685	KNAPP ENERGY, INC.	235	17,411.81
10/29/2010	273686	KUHN'S YARD & GARDEN CARE, INC	4551	295.63
10/29/2010	273687	KZOO TIRE COMPANY	564	588.00
10/29/2010	273688	LABOR READY, INC.	238	1,560.32
10/29/2010	273689	LAWSON PRODUCTS, INC	240	1,067.30
10/29/2010	273690	LOWE'S HOME CENTER	2630	959.02
10/29/2010	273691	MASER, CHASE JOSEPH	999999	42.00
10/29/2010	273692	MAYFLOWER TOURS	3492	1,123.00
10/29/2010	273693	MCCOY,TOM	532	66.30
10/29/2010	273694	MICHIGAN TAX TRIBUNAL	999999	50.00
10/29/2010	273695	MID AMERICA RINK SERVICES, INC	4617	1,480.65
10/29/2010	273696	MID-AMERICA APPRAISAL CO.	3523	760.00
10/29/2010	273697	MIDWEST ENERGY COOPERATIVE	2030	223.69
10/29/2010	273698	MORRIS ROSE AUTO PARTS, INC.	499	150.00
10/29/2010	273699	MURRAY, KATHERINE SALLIE	999999	42.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
10/29/2010	273700	NELSON'S HARDWARE	1566	315.24
10/29/2010	273701	NEW FRESH CLEANING SERVICE	4351	33.75
10/29/2010	273704	NEXTEL	1709	2,309.22
10/29/2010	273705	NICHOLSON, SANDY	999999	1,187.00
10/29/2010	273706	NYE UNIFORMS	299	1,609.24
10/29/2010	273707	OFFICE DEPOT, INC.	1721	479.91
10/29/2010	273708	OFFICEMAX INCORPORATED	301	65.88
10/29/2010	273709	ONE WAY PRODUCTS	440	207.06
10/29/2010	273710	P K CONTRACTING, INC.	1737	1,483.75
10/29/2010	273711	PARADIGM DESIGN, INC.	3306	395.63
10/29/2010	273712	PAWLOSKI, MATTHEW	999999	200.00
10/29/2010	273713	PETERMAN CONCRETE CO.	310	7,627.68
10/29/2010	273714	PETTY CASH-CITY HALL	767	548.17
10/29/2010	273715	PETTY CASH-PARKS	536	226.97
10/29/2010	273716	PINNACLE RESTAURANTS LLC	999999	18,276.04
10/29/2010	273717	PLEUNE SERVICE COMPANY	3985	1,078.63
10/29/2010	273718	PORTAGE FIREFIGHTERS	625	1,491.76
10/29/2010	273719	PORTAGE ON-CALL FIREFIGHTERS	504	133.98
10/29/2010	273720	PORTAGE POLICE OFFICERS ASSOC	624	156.80
10/29/2010	273721	PORTAGE POLICE OFFICERS ASSOC	624	156.80
10/29/2010	273722	PORTAGE PUBLIC SCHOOLS (TRANS)	315	703.81
10/29/2010	273723	PRECISION PRINTER SERVICES INC	2584	911.80
10/29/2010	273724	PREIN & NEWHOF	1738	1,017.80
10/29/2010	273725	PRIORITY HEALTH	4254	18,437.63
10/29/2010	273726	PRO-FLEET	3209	3,882.57
10/29/2010	273727	QUALITY AIR HEATING & COOLING,	3621	832.33
10/29/2010	273728	R & R INDUSTRIES, INC.	4426	99.70
10/29/2010	273729	RATHCO SAFETY SUPPLY, INC.	327	731.68
10/29/2010	273730	RELIABLE MANAGEMENT SYSTEMS, I	4354	331.00
10/29/2010	273731	RIDGE AUTO NAPA	438	1,827.55
10/29/2010	273732	RIETH-RILEY CONSTRUCTION CO.,	4386	1,098.55
10/29/2010	273733	ROAD EQUIPMENT PARTS CENTER	339	567.21
10/29/2010	273734	ROE-COMM, INC.	341	233.40
10/29/2010	273735	ROMENCE GARDENS, INC	343	24.70
10/29/2010	273736	ROWLEY BROTHERS, INC.	346	3,405.16
10/29/2010	273737	SAFETY SERVICES, INC.	349	1,824.08
10/29/2010	273738	SARCOM, INC.	1194	2,416.57
10/29/2010	273739	SARCOM	2076	61,398.55
10/29/2010	273740	SEELMAN, HANNAH ELIZABETH	999999	42.00
10/29/2010	273741	SIGN ART	1174	916.00
10/29/2010	273742	M. LEE SMITH PUBLISHERS LLC	869	431.42
10/29/2010	273743	SMITH, JEREMY	999999	380.00
10/29/2010	273744	SNELLING PERSONNEL SERVICES	2107	2,354.45
10/29/2010	273745	SPRINT	3721	1,846.79
10/29/2010	273746	STAP BROS LAWN & LANDSCAPE, INC	366	3,975.33
10/29/2010	273747	STAR GLASS	2043	180.35
10/29/2010	273748	STATE INDUSTRIAL PRODUCTS CORP	2010	321.42
10/29/2010	273749	STATE OF MICHIGAN	2082	25.00
10/29/2010	273750	STATE OF MICHIGAN (DOT)	368	21,765.34
10/29/2010	273751	STATE SYSTEMS RADIO, INC	369	112.50
10/29/2010	273752	STEENSMA LAWN & POWER EQUIPMEN	3222	69.54

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	BANK CODE	CHECK AMOUNT
10/29/2010	273753	SUDS MOBILE CLEANING SYSTEMS	999999		2,586.36
10/29/2010	273754	THE POSTMAN, INC.	999999		1,186.50
10/29/2010	273755	THOMPSON PUBLISHING GROUP	385		428.50
10/29/2010	273756	THOMPSON, HELENE	4417		116.00
10/29/2010	273757	TMI COMPRESSED AIR SYSTEMS INC	4458		760.43
10/29/2010	273758	TRACTOR SUPPLY CORP.	2817		101.75
10/29/2010	273759	U A W, LOCAL 2290	1862		422.04
10/29/2010	273760	U S POSTAL SERVICE (PORTAGE)	503		1,000.00
10/29/2010	273761	UNITED PARCEL SERVICE	545		261.06
10/29/2010	273762	WASHCO, LLC	1104		800.00
10/29/2010	273763	WELLER TRUCK	1594		126.29
10/29/2010	273764	WEST SHORE FIRE, INC.	419		2,099.23
10/29/2010	273765	WHITE, KENT JACOB	999999		42.00
10/29/2010	273766	WHITE, LINDSEY	999999		50.00
10/29/2010	273767	WILSON, MARK	999999		100.00
10/29/2010	273768	WINDEMULLER ELECTRIC, INC.	3061		743.61
10/29/2010	273769	WINGFOOT COMMERCIAL TIRE	2613		478.88
10/29/2010	273770	WOLVERINE POWER SYSTEMS	4322		3,781.00
10/29/2010	273771	ZBATTERY.COM	2558		384.98
10/29/2010	273772	360 SERVICES, INC.	637		2,109.09
10/29/2010	273773	7-E DISTRICT COURT	999999		140.00
10/29/2010	273774	7TH DISTRICT COURT EAST	999999		100.00

DATE RANGE TOTAL * 940,862.62 *

PAYMENT NO	VENDOR NAME	TRANSFER DATE	AMOUNT	TRACE NUMBER	EFT BATCH	BANK CODE
93	B & B YARDSCAPE	10/29/2010	11,741.00	072000320000001	0000001	00
94	BLUE CARE NETWORK-GREAT LAKES	10/29/2010	58,449.52	072000320000002	0000001	00
95	DELTA DENTAL PLAN OF MI	10/29/2010	20,236.24	072000320000003	0000001	00
96	HARTFORD LIFE INSURANCE COMPANY	10/29/2010	8,148.14	072000320000004	0000001	00

GRAND TOTAL: 98,574.90 NO. OF CHECKS: 4

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 5, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: Home-based Businesses Ordinance

ACTION RECOMMENDED: That City Council refer the revised Home Occupation Ordinance recommended by the City Council Neighborhood Revitalization and Engagement Ad Hoc Committee, to the Planning Commission to initiate the amendment process to the Zoning Code.

During the City Council meeting of March 9, 2010, the Council did not approve an amendment to the Zoning Code involving home-based businesses and instead referred the matter to the Neighborhood Revitalization and Engagement Ad Hoc Committee. Since that time, the Neighborhood Revitalization and Engagement Committee, City Administration and the City Attorney have met on several occasions to consider the home-based businesses ordinance. The City Administration, with the assistance of the City Attorney, developed revisions to the proposed ordinance language previously considered by City Council.

The Neighborhood Revitalization and Engagement Ad Hoc Committee met on Thursday, November 4, 2010 to discuss the revisions to the proposed ordinance and recommend that the ordinance language be referred by City Council to the Planning Commission for consideration. Attached for City Council information and review is the revised ordinance amendment language as prepared by the City Attorney.

It is recommended that City Council refer the revised ordinance language to the Planning Commission to initiate the amendment process to the Zoning Code.

Attachments: Proposed ordinance amendment

[CITY COUNCIL REVIEW VERSION
NOT FOR PUBLICATION]

ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY AMENDING SECTION 42-112 and 42-129 OF CHAPTER 42,
LAND DEVELOPMENT REGULATIONS

THE CITY OF PORTAGE ORDAINS:

That Section 42-112 and 42-129 of Chapter 42, Land Development Regulations, are hereby amended as follows:

Section 42-112. Definitions.

~~Home occupation: An occupation customarily conducted within a dwelling by its occupants as a subordinate use. Without limiting the foregoing, a single family residence used by an occupant of that residence to give instruction in a craft or fine art within the residence shall be considered a home occupation. Beauty shops, barbershops, restaurants, clinics, kennels and similar occupations and trades shall not be deemed home occupations.~~

Home occupation: A home based activity or service conducted on a zoning lot used for residential purposes by an occupant(s) as a subordinate and accessory use involving the sale or exchange of services. Home occupations may include, but are not limited to: administrative offices, photographic studios, personal service establishments, and instruction in outdoor recreational activities. The sale of products and goods is permitted only if incidental to the services of the home occupation or involve the sale of fruits, vegetables or flowers grown on site pursuant to the Michigan Right to Farm Act, Act 93 of 1981, as amended. Instruction in a craft or fine art within the dwelling unit pursuant to MCLA 125.3204 is permitted as a home occupation. For purposes of this section, family day care homes shall not be considered a home occupation. Two types of home occupations are hereby established and permitted pursuant to the terms of this section as follows:

- (1) **Passive home occupations:** Home occupations of low intensity which satisfy the specific conditions and requirements for passive home occupations provided in Section 42-129.A.
- (2) **Active home occupations:** Active home occupations are more intensive than passive home occupations and do not meet one or more of the requirements in Section 42-129.A. Specific conditions and requirements for active home occupations are provided in Section 42-129.B.

~~Sec. 42-129. Home occupations.~~

- ~~A. The director may approve home occupations, provided that a zoning compliance permit is issued after finding that all of the following are satisfied:~~
- ~~B. Any home occupation shall comply with the following requirements:~~
 - ~~1. The occupation or profession is carried on as a subordinate use by a member of the family residing on the premises.~~
 - ~~2. The occupation or profession is carried on wholly within the principal building.~~
 - ~~3. No person outside the family is employed on the premises.~~

- ~~4. No commodity, except one incidental to the home occupation, is sold on the premises.~~
- ~~5. Not more than 25 percent of the total floor area of any one floor (or basement) of the main building is used for the home occupation.~~
- ~~6. The home occupation does not require interior or exterior alterations or the use of mechanical or electronic equipment not customarily used in the home.~~
- ~~7. No sign is or will be used.~~
- ~~8. The home occupation does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances.~~
- ~~9. The home occupation does not generate pedestrian or vehicular traffic beyond that normally generated by homes in the residential neighborhood.~~
- ~~10. No other parking other than the off-street parking facilities normally required for the residential use is used.~~

Section 42-129. Home occupations.

A. A passive home occupation on a zoning lot conducted by the occupant that meets the following standards is allowed as an accessory use with no permit being required.

- 1. The occupation is conducted as a subordinate use by a member of the family occupying the dwelling unit.**
- 2. The occupation is conducted wholly within the dwelling unit.**
- 3. No person outside the family is employed in the home occupation.**
- 4. Not more than 25 percent of the total floor area of any one floor of the dwelling unit, or 25 percent of the basement, is used for the home occupation.**
- 5. The home occupation does not require interior or exterior alterations or the use of mechanical or electronic equipment not customarily used in a dwelling unit.**
- 6. No sign identifies the home occupation. The use of window displays are not permitted.**
- 7. The home occupation does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No passive home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.**
- 8. The home occupation does not generate pedestrian or vehicular traffic beyond that normally generated by a dwelling unit.**
- 9. There shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.**
- 10. The use or storage of any materials or equipment which is incidental to the services of the home occupation is permitted only within the enclosed sections of the one-family dwelling unit. The home occupation or any part thereof shall not be conducted in any attached or detached accessory building or structure.**

B. An active home occupation on a zoning lot where there is a one-family residential dwelling unit may be conducted by the occupant if approved by the Planning Commission after a public hearing in accordance with the requirements of Section 103 of the Michigan Zoning Enabling Act, MCLA 125.3101, et. seq., and finding that the application of the occupant meets the following standards:

- 1. No more than one person other than the full-time occupant(s) of the one-family dwelling unit shall be engaged in the conduct of the active home occupation on the zoning lot. The home occupation is personal to the full-time occupant engaged in the conduct of the active home occupation and is not transferrable without Planning Commission approval.**
- 2. Not more than 25 percent of the total floor area of any one floor of the one-family dwelling unit, or 25 percent of any basement, and provided that no more than 400 square feet of the dwelling unit is occupied by the active home occupation. The planning commission may allow an increase in the floor area of the existing dwelling unit to be used for the home occupation not to exceed a maximum of 50 percent of the floor area of any one floor or basement of the dwelling unit. The planning commission shall make a finding that the increase of floor area used for the home occupation does not adversely impact adjacent residential uses and the increase in floor area used for the home occupation complies with the standards contained in Section 29-142(B)(9)(a) through (f) below.**
- 3. There shall be no alterations or exterior treatments to the zoning lot or structures on the zoning lot which would, in any way, change its residential character or appearance. Off-street parking provided for the active home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions.**
- 4. Storage of goods, materials or equipment which is incidental to the services of the home occupation shall be permitted only within the enclosed sections of the one-family dwelling unit or within not more than 50 percent of the total floor area of a completely enclosed accessory building.**
- 5. The active home occupation, or any part thereof, shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area, except outdoor areas may be used for instruction in recreational activities customarily associated with residential uses including, but not limited to, swimming lessons and tennis lessons. This section shall not prohibit the growing of fruits, vegetables or flowers nor any other farm product protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, in any outside area, provided that the farm product is grown, raised or produced on the zoning lot occupied by the active home occupation.**
- 6. Materials, equipment or goods which are incidental to the active home occupation shall not be visible from adjacent properties nor shall they be directly sold or delivered to customers on the premises of the one-family dwelling, except for the sale of fruits, vegetables and flowers as permitted in Section 42-129(B)(5).**
- 7. No freestanding signage is permitted. Non-illuminated wall signage (maximum of six square feet) identifying the name of the active home occupation may be affixed to the one-family dwelling unit. Window displays are not permitted.**
- 8. The active home occupation shall not produce or generate excessive or undue noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No active**

home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.

9. The Planning Commission shall consider whether the use and the expected conduct of the use associated with the active home occupation application submitted by the occupant is within an acceptable range of compatibility appropriate for the surrounding area and does not present undue safety hazards. In its determination, the Planning Commission shall consider whether the use and expected conduct of the use specified in the application by the occupant:
 - a. Promotes the intent and purpose of this section;
 - b. Sufficiently mitigates adverse impacts on the surrounding residential uses of land. The Planning Commission may consider factors including, but not limited to, the following:
 - i. The proximity of the surrounding uses to the active home occupation;
 - ii. The size of the zoning lot, location of driveways, topography, vegetation, location of structures and other features of the zoning lot;
 - iii. The seasonal nature of the active home occupation;
 - iv. The size and weight of vehicles to be used in the active home occupation; and
 - v. The number of trips the vehicle to be used in the home occupation is expected to make to and from the property;
 - c. Does not unduly affect the capacities of public services or facilities;
 - d. Is consistent with the public health, safety and welfare;
 - e. Is harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan; and
 - f. Is planned and designed to ensure that the nature and intensity of the use and the site layout and its relation to the streets giving access to it, is not hazardous to the area and does not unduly conflict with normal traffic.
10. The Planning Commission may attach conditions to the application by the occupant to conduct an active home occupation deemed necessary for the general welfare, for the protection of individual property rights, to mitigate any negative impacts on the surrounding residential uses of land including the number of customers allowed on the zoning lot at any one time, hours of operation, and similar factors, and any condition allowed by MCLA 125.3504(4) of the Michigan Zoning Enabling Act.

FIRST READING:
SECOND READING:
EFFECTIVE DATE:

CERTIFICATION

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the _____ day of _____, 2010.

PREPARED BY:
Randall L. Brown (P34116)
Portage City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

Approved as to form

Date: _____

City Attorney

[PUBLICATION VERSION]

ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY AMENDING SECTION 42-112 and 42-129 OF CHAPTER 42,
LAND DEVELOPMENT REGULATIONS

THE CITY OF PORTAGE ORDAINS:

That Section 42-112 and 42-129 of Chapter 42, Land Development Regulations, are hereby amended as follows:

Section 42-112. Definitions.

Home occupation: A home based activity or service conducted on a zoning lot used for residential purposes by an occupant(s) as a subordinate and accessory use involving the sale or exchange of services. Home occupations may include, but are not limited to: administrative offices, photographic studios, personal service establishments, and instruction in outdoor recreational activities. The sale of products and goods is permitted only if incidental to the services of the home occupation or involve the sale of fruits, vegetables or flowers grown on site pursuant to the Michigan Right to Farm Act, Act 93 of 1981, as amended. Instruction in a craft or fine art within the dwelling unit pursuant to MCLA 125.3204 is permitted as a home occupation. For purposes of this section, family day care homes shall not be considered a home occupation. Two types of home occupations are hereby established and permitted pursuant to the terms of this section as follows:

- (1) Passive home occupations: Home occupations of low intensity which satisfy the specific conditions and requirements for passive home occupations provided in Section 42-129.A.
- (2) Active home occupations: Active home occupations are more intensive than passive home occupations and do not meet one or more of the requirements in Section 42-129.A. Specific conditions and requirements for active home occupations are provided in Section 42-129.B.

Section 42-129. Home occupations.

- A. A passive home occupation on a zoning lot conducted by the occupant that meets the following standards is allowed as an accessory use with no permit being required.
 1. The occupation is conducted as a subordinate use by a member of the family occupying the dwelling unit.
 2. The occupation is conducted wholly within the dwelling unit.
 3. No person outside the family is employed in the home occupation.
 4. Not more than 25 percent of the total floor area of any one floor of the dwelling unit, or 25 percent of the basement, is used for the home occupation.
 5. The home occupation does not require interior or exterior alterations or the use of mechanical or electronic equipment not customarily used in a dwelling unit.
 6. No sign identifies the home occupation. The use of window displays are not permitted.
 7. The home occupation does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No passive home occupation shall be permitted

to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.

8. The home occupation does not generate pedestrian or vehicular traffic beyond that normally generated by a dwelling unit.
 9. There shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.
 10. The use or storage of any materials or equipment which is incidental to the services of the home occupation is permitted only within the enclosed sections of the one-family dwelling unit. The home occupation or any part thereof shall not be conducted in any attached or detached accessory building or structure.
- B. An active home occupation on a zoning lot where there is a one-family residential dwelling unit may be conducted by the occupant if approved by the Planning Commission after a public hearing in accordance with the requirements of Section 103 of the Michigan Zoning Enabling Act, MCLA 125.3101, et. seq., and finding that the application of the occupant meets the following standards:
1. No more than one person other than the full-time occupant(s) of the one-family dwelling unit shall be engaged in the conduct of the active home occupation on the zoning lot. The home occupation is personal to the full-time occupant engaged in the conduct of the active home occupation and is not transferrable without Planning Commission approval.
 2. Not more than 25 percent of the total floor area of any one floor of the one-family dwelling unit, or 25 percent of any basement, and provided that no more than 400 square feet of the dwelling unit is occupied by the active home occupation. The planning commission may allow an increase in the floor area of the existing dwelling unit to be used for the home occupation not to exceed a maximum of 50 percent of the floor area of any one floor or basement of the dwelling unit. The planning commission shall make a finding that the increase of floor area used for the home occupation does not adversely impact adjacent residential uses and the increase in floor area used for the home occupation complies with the standards contained in Section 29-142(B)(9)(a) through (f) below.
 3. There shall be no alterations or exterior treatments to the zoning lot or structures on the zoning lot which would, in any way, change its residential character or appearance. Off-street parking provided for the active home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions.
 4. Storage of goods, materials or equipment which is incidental to the services of the home occupation shall be permitted only within the enclosed sections of the one-family dwelling unit or within not more than 50 percent of the total floor area of a completely enclosed accessory building.
 5. The active home occupation, or any part thereof, shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area, except outdoor areas may be used for instruction in recreational activities customarily associated with residential uses including, but not limited to, swimming lessons and tennis lessons. This section shall not prohibit the growing of fruits, vegetables or flowers nor any other farm product protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, in any outside area, provided that the farm product is grown, raised or produced on the zoning lot occupied by the active home occupation.
 6. Materials, equipment or goods which are incidental to the active home occupation shall not be visible from adjacent properties nor shall they be directly sold or delivered to customers on the premises of the one-family dwelling, except for the sale of fruits, vegetables and flowers as permitted in Section 42-129(B)(5).

7. No freestanding signage is permitted. Non-illuminated wall signage (maximum of six square feet) identifying the name of the active home occupation may be affixed to the one-family dwelling unit. Window displays are not permitted.
8. The active home occupation shall not produce or generate excessive or undue noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No active home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.
9. The Planning Commission shall consider whether the use and the expected conduct of the use associated with the active home occupation application submitted by the occupant is within an acceptable range of compatibility appropriate for the surrounding area and does not present undue safety hazards. In its determination, the Planning Commission shall consider whether the use and expected conduct of the use specified in the application by the occupant:
 - a. Promotes the intent and purpose of this section;
 - b. Sufficiently mitigates adverse impacts on the surrounding residential uses of land. The Planning Commission may consider factors including, but not limited to, the following:
 - i. The proximity of the surrounding uses to the active home occupation;
 - ii. The size of the zoning lot, location of driveways, topography, vegetation, location of structures and other features of the zoning lot;
 - iii. The seasonal nature of the active home occupation;
 - iv. The size and weight of vehicles to be used in the active home occupation; and
 - v. The number of trips the vehicle to be used in the home occupation is expected to make to and from the property;
 - c. Does not unduly affect the capacities of public services or facilities;
 - d. Is consistent with the public health, safety and welfare;
 - e. Is harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan; and
 - f. Is planned and designed to ensure that the nature and intensity of the use and the site layout and its relation to the streets giving access to it, is not hazardous to the area and does not unduly conflict with normal traffic.
10. The Planning Commission may attach conditions to the application by the occupant to conduct an active home occupation deemed necessary for the general welfare, for the protection of individual property rights, to mitigate any negative impacts on the surrounding residential uses of land including the number of customers allowed on the zoning lot at any one time, hours of operation, and similar factors, and any condition allowed by MCLA 125.3504(4) of the Michigan Zoning Enabling Act.

FIRST READING:
SECOND READING:
EFFECTIVE DATE:

CERTIFICATION

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the _____ day of _____, 2010.

PREPARED BY:
Randall L. Brown (P34116)
Portage City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

Approved as to form
Date: 11/2/2010
RLB

City Attorney

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor & City Council

DATE: November 10, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: Holiday Tree Lighting/Traditional Holiday Celebration - Information Only

On Saturday, December 4, 2010, beginning at 7:00 p.m., the annual Tree Lighting/Traditional Holiday Celebration will take place. The evening tree lighting ceremony festivities begin with Mayor and City Council participation at Point Garden, which is located at the intersection of South Westnedge Avenue and Library Lane. Following the tree lighting, participants will carol along the Bicentennial Park Trail to the Celery Flats Historical Area for the Traditional Holiday Celebration.

The Holiday Celebration will feature music and special activities. Refreshments will be provided at the Hayloft Theatre at the close of the event. This celebration encourages the public to enter into the spirit of holiday giving by donating to the less fortunate. Collection bins will be located at Celery Flats to receive donations of new toys, new winter hats, new winter mittens and non-perishable food items to be distributed to area service organizations.

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 8, 2010

FROM: Maurice S. Evans, City Manager 

SUBJECT: October 2010 Summary Environmental Activity Report – Information Only

Attached please find the October 2010 Summary Environmental Activity Report from the Department of Transportation & Utilities Director, W. Christopher Barnes. New material, or material of specific interest to City Council is presented in italics.

These items serve to update the Council on environmental affairs.

c: W. Christopher Barnes, Department of Transportation & Utilities
Planning Commission
Portage Environmental Board

CITY OF PORTAGE

COMMUNICATION

TO: Maurice S. Evans, City Manager

DATE: November 8, 2010

FROM: W. Christopher Barnes, Director of Transportation & Utilities

SUBJECT: October 2010 Environmental Activity Report – Information Only

RECEIVED

NOV 09 2010

CITY MANAGER'S OFFICE
PORTAGE MI

In keeping with goals and objectives adopted by the Council emphasizing the need to enhance environmental quality and protect natural resources, the following information is intended to keep the Council, Planning Commission and Environmental Board apprised of current environmental issues.

Important environmental issues being monitored and coordinated by the Administration are attached. The Summary Environmental Activity Report will continue to be provided on a monthly basis to the Council, Planning Commission and Environmental Board.

SUMMARY ENVIRONMENTAL ACTIVITY REPORT

October 2010 (*updates in italics*)

<u>Project/Activity</u>	<u>Description</u>	<u>Status</u>
Portage City Landfill	Ongoing groundwater monitoring of former municipal landfill.	-City Council awarded a 3 year contract to American Hydrogeologic Corporation on February 23, 2010 to perform annual groundwater sampling. The site groundwater data will continue to be monitored to confirm continuation of the natural attenuation process. Sampling shows continued improvement in groundwater quality. Sampling performed in June 2010. Annual report submitted to MDNRE in June 2010. General groundwater quality continues to improve, but site will require monitoring for the foreseeable future.
Site Inspection/Development Project Review	Review of existing business & industries and review of proposed business and industrial development projects for environmental protection purposes and/or building plans completed.	-Coordination with property owners and City or State agencies ongoing. <i>-Review of 5 site/building plans and/or plats completed in October 2010.</i>
Sewer Connection Program	Groundwater protection program requiring residential/business hookup to the sanitary sewer where available.	<i>-Sanitary sewer hookup permits issued in October 2010: 5 commercial and 3 residential. Two sewer connections made as part of the Mandatory Sewer Program. Eight Civil infraction notices were issued to non compliance properties.</i>
West Lake Management Program	Special assessment district designed to maintain/improve lake conditions.	-Five Year Lake Management Assessment District process initiated (Resolution #1) on December 7, 2004. Resolution #3 was approved by City Council on January 11, 2005. Resolution #5 was adopted by City Council on February 8, 2005. On March 22, 2005, City Council approved a contract with Aquatic Services, Goodrich, MI, to perform annual weed treatment. West Lake currently working with the Kalamazoo County Drain Commissioner to create a filtration system on the Austin Lake Drain. On July 10, 2007, City Council authorized the Administration to submit a grant application in the amount of \$5,000 to the Kalamazoo Foundation to assist funding the filtration system. Construction bids received by the Drain Commissioner on November 14, 2006. Construction began on the Austin Dam reconstruction in December 2006 and new structure completed in March 2007. Filtration system construction was substantially completed in July 2008. On July 8, 2008, City Council awarded contracts to Aquatic Services, Inc. for the 2008 Weed Treatment Program and awarded a contract to ASI Environmental to perform watershed and vegetation survey. Spring 2009 weed control application was completed in June 2009.

City Council on March 23, 2010. The 2010 lake treatment is complete .

Retention Basin Sampling Program
Investigation regarding potential impact of retention basins on groundwater levels.

-Historical monitoring continues to show minor impacts at most basins. From 1993 through 2009 the monitoring program showed stable groundwater impacts due to stormwater infiltration. Alternative road salt practices continue to be considered and evaluated. On March 23, 2010, City Council awarded a four-year contract to Wightman Environmental. Program will focus primarily on groundwater level information. Sampling of retention basins was completed on June 25, 2010. *Report is due in December 2010.*

Wellhead Protection Program (WHPP)

Development of program to protect City well fields and surrounding area from contamination resulting from improper land use.

-Wellhead Protection Grant award received from MDEQ on August 30, 1999 and Council accepted the grant on October 5, 1999. Council also awarded contract to Earth Tech to complete WHPP. Earth Tech completed the final wellhead protection plan and MDEQ submittal was made on October 14, 2000. Plan was reviewed by MDEQ with written approval received in March, 2001. City staff made a presentation to the American Water Works Association at their April 25, 2008 meeting to highlight current city initiatives. Plan implementation is ongoing.

Leaf Compost Monitoring Program

Monitoring and analysis of groundwater at the new Oakland Drive Leaf Compost site.

-City Council awarded contract on August 21, 2001 to Soil & Materials Engineers for monitoring and analysis of groundwater impact of the new compost operation. Drilling was completed in October 2001 and first sampling cycle was completed in February 2002. Semi annual sampling was performed from 2002 to 2009 in June and January. Sampling and analysis results continue to show no groundwater impacts from the leaf composting. Sampling schedule was reduced to annual sampling in 2009 with results showing continued minor impact on groundwater quality. The 2010 report was received with results showing minimal impact on groundwater. Next sampling scheduled for July 2011.

National Pollution Discharge Elimination System (NPDES) permit implementation

Five year plan to implement the current NPDES stormwater permit.

-Received NPDES general permit on August 15, 2001. Renewal Application submission was made to MDEQ on March 7, 2003. New permit received in 2004 mandates involvement in several county watershed groups. City staff completed the submission of a Stormwater Pollution Prevention Initiative (SWIPPI) as required by NPDES permit. SWIPPI submitted on October 21, 2005. New certificate of coverage permit was issued by MDEQ on September 30, 2009. New permit covers a 5 year time frame with first work item (updating the Public Participation Plan) due December 11, 2009. Plan update completed with other local governments and submitted November 24, 2009. City staff worked with other agencies at the 2010 Home Expo on March 17 – 20, 2010. Staff completed an updated SWIPPI submittal to MDNRE. SWIPPI was submitted for MDNRE approval on June 25, 2010. *Permit implementation is ongoing.*

National Pollution Discharge Elimination System (NPDES) permit implementation	Kalamazoo River Mainstem Watershed Management Plan	-First meeting was held September 17, 2004. Proposals for completing the watershed plan were received by Kalamazoo County on September 15, 2005 and a contract awarded to Kieser & Associates in November 2005. Draft watershed plan submitted to MDEQ on December 30, 2005. Review comments received from MDEQ and revised watershed plan due in December 2006. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009. Kalamazoo River Water Festival was held on August 14, 2010 with City of Portage participation. Preliminary grant request submitted September 16, 2010 for West Fork of Portage Creek storm water enhancements. <i>Complete grant application was submitted on October 25, 2010.</i>
Portage River Watershed Management Plan	-Public participation plan submitted June 28, 2004. Proposals for a Watershed Management Plan were received by the Kalamazoo County Road Commission and a contract awarded to the Kalamazoo County Conservation Service in November 2005. Draft watershed plan submitted to MDEQ on December 30, 2005. Follow-up meetings are held monthly to facilitate an implementation schedule. Portage River Watershed public meeting held in Vicksburg on April 11, 2006. Review comments received from MDEQ and revised watershed plan due November 2006. Revised Watershed Plan submitted November 30, 2006, follow up meetings to be held as necessary. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009. Based upon MDEQ comments, the plan was revised and resubmitted on December 21, 2009.	
Plan to implement and maintain an Illicit Discharge Elimination Program (IDEP).	-On October 21, 2001, City Council awarded a contract to Fishbeck, Thompson, Carr and Huber for the Portage Creek element of the IDEP, which was completed in July 2002. On February 19, 2002, City Council approved a new ordinance as required by the NPDES permit titled "Storm Water Illicit Discharges and Connections". On April 28, 2004, City Council accepted a grant from the State of Michigan in the amount of \$152,264 and awarded a contract to Fishbeck, Thompson, Carr and Huber in the amount of \$184,264 for the remainder of the IDEP for the entire city. Program implementation is ongoing as funding allows. Continued outfall sampling is required by permit and will be budgeted accordingly. IDEP program was updated for submittal to MDNRE on June 25, 2010, and part of the SWIPPI.	
Garden Lane Arsenic Removal Facility	Construction of a water treatment facility at the Garden Lane Wellfield to remove arsenic, iron	-City Council approved an agreement with Fishbeck, Thompson, Carr & Huber, Inc. on January 10, 2006 to prepare a feasibility study to meet new USEPA arsenic standards for drinking water. Feasibility study completed in

and manganese from the groundwater.

August 2006. Feasibility study recommended construction of a filter system using various filter media materials. Small scale pilot studies began in spring 2007. Pilot studies completed with generally favorable results. Geotechnical soils report completed in April 2007 and wetlands delineation received in May. Operating plants visited in May to familiarize staff with various arsenic removal processes. Engineering proposals for the project were received August 14, 2007. Project engineering awarded to Earth Tech by City Council on September 11, 2007. Project design to include Leadership in Energy and Environmental Design (LEED) criteria. Project construction bids were received on November 25, 2008. Contract awarded by City Council on December 16, 2008 to Adams Building Contractors, Inc., Jackson, Michigan. Preconstruction meeting was held January 29, 2009. Garden Lane Well #4 drilling is complete and well building is completed. Start up activities began in May 2010. Facility is in operation with ribbon cutting held August 2, 2010. City staff gave a presentation on August 9, 2010 to the Michigan Chapter of the American Water Works Association about the arsenic removal of the facility. The facility is producing about one million gallons of water per day.

Environmental Incident/Spill Clean Up Notification

Environmental Protection Program to assist Portage Police/Fire Departments with spill containment and spill cleanup.

-The number of environmental incident/spill investigations performed in October 2010-0. The number of incidents requiring city forces/contractor emergency cleanups-0.

Localized Groundwater Table Investigation

Hydrogeologic study of the Portage area, especially in the Sprinkle Woods plat area, to determine causes of increase in groundwater elevation.

-On April 29, 2008, City Council awarded a contract to American Hydrogeology Corporation to investigate the reason and extent of seasonally high groundwater elevation. Special emphasis will be placed on the Black Forest plat area to suggest possible solutions to the basement leaking problems experienced in the area. Study was transmitted to City Council on July 22, 2008. Work was completed on October 31, 2008. City staff continues to investigate other remedies for local groundwater table issues. Work complete on compiling a history of local groundwater table elevations at 19 city-owned retention basins with data from 1994 to 2009. Data from the analysis shows a general upward trend through the Portage area from 2005 to present. Five monitoring wells were installed in the Jamaica Lane area as a result of a number of citizen concerns. *Analysis of the Jamaica Lane wells shows that seasonal groundwater table levels have dropped approximately 24" from spring 2009 levels and level has stabilized through October 2010.* October sampling continued to show stable groundwater table. *Sampling will continue through the fall and winter months as weather allows.*

Hampton Wetland Area Water

Assistance with the Inverness

-Ongoing assistance with the Condominium Association to develop

Level	Condominium Association to Review Surface Water Levels	appropriate measures to regulate the rising water level in Hampton Wetlands Area located on the north side of West Centre Avenue and east of Angling Road. Current activity has centered on meeting with MDNRE staff to determine feasible method to lower water levels. Association currently working with MDNRE permit staff to clarify permit requirements. No change in status. <i>Lower groundwater table elevation has reduced the concerns from the Condominium Association.</i>
Southwest Michigan Regional Sustainability Covenant	Collaborative effort with local government, academic, and other stakeholders to lead toward environmental, economic and social sustainability.	-On May 12, 2009, City Council approved the Southwest Michigan Regional Sustainability Covenant. A sustainability work session was held April 14, 2010, to review elements of the covenant in cooperation with the City of Kalamazoo and the City of Battle Creek. A grant application was made to MDNRE for a greenhouse gas inventory study of the area. Success of grant application may not be known until late summer. Notice received July 15, 2010 that the grant application was not successful. City staff attended a September 10, 2010 meeting in Grand Rapids to discuss sustainable economic, environment, and society programs.

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CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: October 13, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: Barrington Woods Apartments – Easement and License Agreements

ACTION RECOMMENDED: That City Council adopt the Resolution granting the Easement and Right-of-Way Agreement for Ingress and Egress and License Agreement To Locate Personal Property in City Right-of-Way to Duke Barrington Limited Dividend Housing Association Limited Partnership, place the Resolution on file with the City Clerk for 28 days and take final action on November 16, 2010.

On November 17, 2009, City Council granted an access easement for an existing driveway over city-owned land to the owner of 7432 and 7452 Garden Lane to address a property access issue raised by a lending institution. During review of the 7432 and 7452 Garden Lane matter, another encroachment involving improvements associated with the Barrington Woods Apartments, which are owned by Duke Barrington Limited Dividend Housing Association Limited Partnership (Residential Opportunities, Incorporated), was identified. The encroachments involve 1) property located at 7451 Garden Lane, which is owned by the City of Portage and 2) former Garden Lane right-of-way, which was the subject of the easement granted by the City Council in November 2009. Information regarding each encroachment is explained below and shown on the accompanying aerial photo vicinity map.

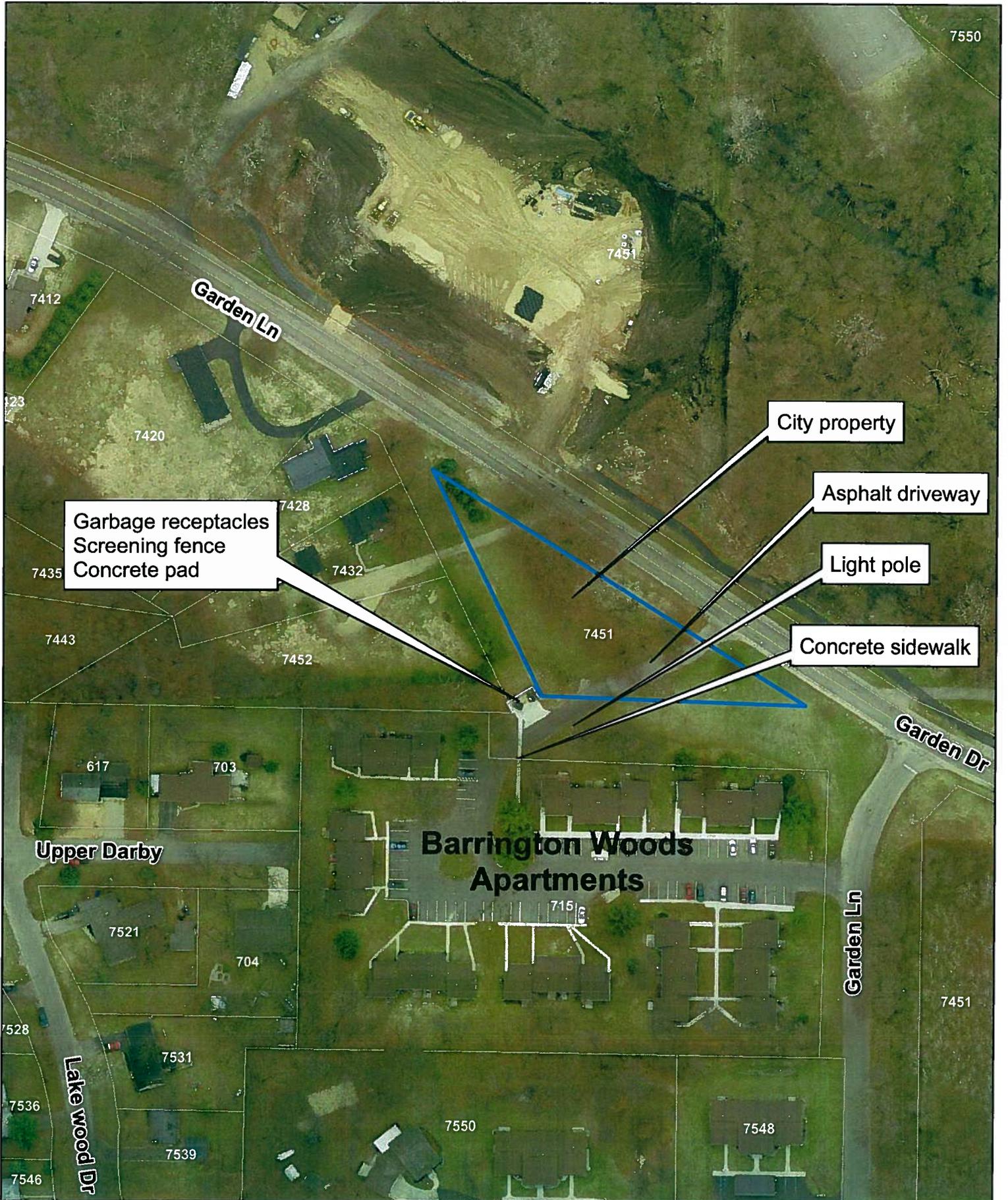
- Encroachment into city-owned property (7451 Garden Lane). An asphalt driveway that provides a second means of ingress and egress to the Barrington Woods Apartments was constructed in the mid-1980s over 7451 Garden Lane.
- Encroachment into the former Garden Lane right-of-way. In December 1983 City Council adopted a resolution and completed the realignment and extension of Garden Lane between South Westnedge Avenue and Lovers Lane. The roadway improvements in the former Garden Lane were removed, but the right-of-way was specifically retained by the City Council for potential future use and for overhead utilities that exist. Several improvements associated with the Barrington Woods Apartments have been installed and include: refuse dumpster and concrete pad; screening fence; sidewalk; light pole; and asphalt driveway.

The City Council Ad-Hoc Property Committee met on March 22, 2010, to discuss the subject and recommended that the City Administration proceed with preparation of the appropriate documents to formalize city approval to allow the improvements. The City Attorney prepared the accompanying easement and license agreement and forwarded the documents to Residential Opportunities, Incorporated on May 7, 2010. After several discussions involving the language of the documents, the documents were signed and returned on September 22, 2010.

The City Attorney has prepared the accompanying Resolution. The City Administration recommends that the resolution be adopted and the access easement and license agreement be approved. The resolution, if approved by City Council, will be on file with the City Clerk for 28 days as required by City Charter. Finalization of the access easement and license agreement can be scheduled for the City Council meeting on November 16, 2010.

Attachments: Aerial photo vicinity map
Resolution, Easement and License Agreements

Vicinity Map



CITY OF PORTAGE, MICHIGAN
RESOLUTION NO. 1 TO GRANT EASEMENT AND LICENSE AGREEMENT

Minutes of a regular meeting of the City Council for the City of Portage, Michigan held on October 19, 2010 at 7:30 p.m. local time at City Hall in the City of Portage, Michigan.

PRESENT: Campbell, O'Brien, Randall, Reid, Sackley, Strazdas, Urban

ABSENT: None.

The following resolution was offered by:

COUNCILMEMBER: Sackley and supported by

COUNCILMEMBER: Reid.

BE IT RESOLVED that the City of Portage grant an "Easement and Right-of-Way Agreement for Ingress and Egress" to Duke Barrington Limited Dividend Housing Association Limited Partnership as described as follows:

A 30 FOOT WIDE EASEMENT FOR INGRESS AND EGRESS IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE CENTER OF SAID SECTION 15; THENCE SOUTH 89° 54' 40" WEST ON THE EAST AND WEST QUARTER LINE OF SAID SECTION 15 A DISTANCE OF 232.20 FEET TO A POINT WHICH IS 2429.23 FEET NORTH 89° 54' 40" EAST OF THE WEST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 00°05'20" WEST PERPENDICULAR TO SAID EAST AND WEST QUARTER LINE 16.50 FEET TO THE NORTH RIGHT OF WAY LINE OF GARDEN LANE AND THE POINT OF BEGINNING OF THE EASEMENT HEREIN DESCRIBED; THENCE SOUTH 89° 54' 40" WEST ON SAID NORTH RIGHT OF WAY LINE AND 16.5 FEET NORTH OF AND PARALLEL WITH SAID EAST AND WEST QUARTER LINE 64.40 FEET; THENCE NORTH 58° 01' 55" EAST 25.07 FEET; THENCE NORTH 65° 17' 01" EAST 84.29 FEET; THENCE NORTH 52° 50' 27" EAST 17.25 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GARDEN DRIVE; THENCE SOUTH 58° 25' 50" EAST ON SAID SOUTHERLY RIGHT OF WAY LINE 32.19 FEET; THENCE SOUTH 52° 50' 27" WEST 32.20 FEET; THENCE SOUTH 65° 17' 01" WEST 53.89 FEET TO THE POINT OF BEGINNING.

ASSUMED SAID EAST AND WEST QUARTER LINE TO BEAR SOUTH 89° 54' 40" WEST PER DESCRIPTION OF THE GARDEN LANE RIGHT OF WAY CONTAINED IN A RESOLUTION OF THE CITY OF PORTAGE CITY COUNCIL DATED DECEMBER 20, 1983.

EXHIBIT A

CITY OF PORTAGE, MICHIGAN
NOTICE OF PUBLIC HEARING FOR INTENTION TO GRANT EASEMENT
AND LICENSE AGREEMENT
IN THE CITY OF PORTAGE, MICHIGAN

PLEASE TAKE NOTICE, that on the ____ day of _____, 2010, the City Council of the City of Portage voted to grant an "Easement and Right-of-Way Agreement for Ingress and Egress" on City owned property and "License Agreement to Locate Personal Property in City Right-of-Way" to Duke Barrington Limited Dividend Housing Association Limited Partnership.

PLEASE TAKE FURTHER NOTICE that the resolution authorizing this action and the "Easement and Right-of-Way Agreement for Ingress and Egress" and "License Agreement to Locate Personal Property in City Right-of-Way" to be given are on file with the City Clerk and open for public inspection. Said documents will be so held by the City Clerk for twenty-eight (28) days after publication of this notice and may be inspected at the Clerk's office during regular working hours. Any person(s) objecting to this sale should make their objection known to the City Council within twenty-eight (28) days of the publication of this notice. After said twenty-eight (28) day period, the Council may take final action and grant said "Easement and Right-of-Way for Ingress and Egress" and "License Agreement to Locate Personal Property in City Right-of-Way".

Dated: _____, 2010

James R. Hudson, City Clerk

BE IT FURTHER RESOLVED that the City of Portage grant a "License Agreement to Locate Personal Property" on the unimproved portion of Garden Lane, including two garbage receptacles, screening fence, concrete sidewalk, 22 foot wide asphalt driveway, light pole and concrete pad.

BE IT FURTHER RESOLVED that notice, in substantially the form attached as Exhibit A, be published in a newspaper of general circulation within the City, giving notice of the City's intent to grant the "Easement and Right-of-Way for Ingress and Egress" and "License Agreement to Locate Personal Property in City Right-of-Way".

AYES: Councilmember Campbell, O'Brien, Randall, Reid, Sackley,
Strazdas, Urban

NAYS: Councilmember None.

ABSENT: Councilmember None.

RESOLUTION DECLARED ADOPTED: Seven to Zero (7 to 0) on October 19, 2010

James R. Hudson, City Clerk

CERTIFICATION

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

I, the undersigned, the duly qualified City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the 19th day of October, 2010, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 20th day of October, 2010.

Approved as to Form
Date: 10/19/2010
[Signature]

JAMES R. HUDSON, City Clerk

EASEMENT AND RIGHT-OF-WAY AGREEMENT FOR INGRESS AND EGRESS

This Easement and Right-of-Way Grant is made and entered into this 22 day of September, 2010 by and between the City of Portage, a Michigan municipal corporation, organized under the laws of the State of Michigan, with offices at 7900 South Westnedge Avenue, Portage, Michigan 49002 (hereinafter "Grantor") and Duke Barrington Limited Dividend Housing Association Limited Partnership of 1100 South Rose Street, Kalamazoo, Michigan 49007 (hereinafter "Grantee");

WHEREAS, the Grantor owns one (1) triangular shaped parcel of land addressed as 7451 Garden Lane, Portage, Michigan, which is included in the legal description attached as Exhibit A (hereinafter "Grantor's parcel"); and

WHEREAS, the Grantee owns the parcel located 715 Barrington Drive, Portage, Michigan, commonly known as Barrington Woods Apartments which is legally described in the attached Exhibit B (hereinafter "Grantee's parcel");

WHEREAS, Grantor's parcel is located between the existing Garden Drive right-of-way and Grantee's parcel as illustrated in the drawing attached and incorporated as Exhibit C; and

WHEREAS, one of Grantee's access points to Garden Drive from Grantee's parcel is by use of an improved driveway serving Grantee's parcel and extend across the Grantor's parcel; and

WHEREAS, the parties are now desirous of creating an easement and right-of-way over Grantor's parcel to be used by Grantee for ingress and egress and to establish certain rights and obligations in connection therewith as more fully set forth herein (the "Easement Agreement"); and

WHEREAS, contemporaneous with the execution of this Easement Agreement, the parties have entered into a License Agreement to Locate Personal Property in City Right-of-Way permitting Grantee to locate certain improvements, including a driveway, in the City right-of-way (Unimproved Garden Lane) which is situated between Grantee's parcel and Grantor's parcel.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grantor does hereby convey, grant and release to said Grantee a nonexclusive easement and right-of-way over that part of Grantor's parcel which is described below. The area constituting the Easement ("Easement Area") is as follows:

A 30 FOOT WIDE EASEMENT FOR INGRESS AND EGRESS IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE CENTER OF SAID SECTION 15; THENCE SOUTH 89° 54' 40" WEST ON THE EAST AND WEST QUARTER LINE OF SAID SECTION 15 A DISTANCE OF 232.20 FEET TO A POINT WHICH IS 2429.23 FEET NORTH 89° 54' 40" EAST OF THE WEST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 00°05'20" WEST PERPENDICULAR TO SAID EAST AND WEST QUARTER LINE 16.50 FEET TO THE NORTH RIGHT OF WAY LINE OF GARDEN LANE AND THE POINT OF BEGINNING OF THE EASEMENT HEREIN DESCRIBED; THENCE SOUTH 89° 54' 40" WEST ON SAID NORTH RIGHT OF WAY LINE AND 16.5 FEET NORTH OF AND PARALLEL WITH SAID EAST AND WEST QUARTER LINE 64.40 FEET; THENCE NORTH 58° 01' 55" EAST 25.07 FEET; THENCE NORTH 65° 17' 01" EAST 84.29 FEET; THENCE NORTH 52° 50' 27" EAST 17.25 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GARDEN DRIVE; THENCE SOUTH 58° 25' 50" EAST ON SAID SOUTHERLY RIGHT OF WAY LINE 32.19 FEET; THENCE SOUTH 52° 50' 27" WEST 32.20 FEET; THENCE SOUTH 65° 17' 01" WEST 53.89 FEET TO THE POINT OF BEGINNING.

SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD, OR OTHERWISE.

SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED IN A FULL AND ACCURATE TITLE SEARCH.

ASSUMED SAID EAST AND WEST QUARTER LINE TO BEAR SOUTH 89° 54' 40" WEST PER DESCRIPTION OF THE GARDEN LANE RIGHT OF WAY CONTAINED IN A RESOLUTION OF THE CITY OF PORTAGE CITY COUNCIL DATED DECEMBER 20, 1983.

See Exhibit C for survey drawing.

2. This Easement Agreement is granted for the sole use, benefit and enjoyment of Grantee's parcel, and is given for the sole purpose of allowing ingress and egress from the Grantee's parcel to the existing Garden Drive right-of-way. There is no intention to grant third party beneficiary rights by the grant of this Easement Agreement.

3. Grantee's rights under this Easement Agreement are subject to any improvements which may be presently located in the Easement Area, and subject further to any prior easements, licenses, leases, or other interest in the land previously granted by Grantor or its predecessors in title.

4. Grantee shall not remove, enlarge, diminish, or in any way, alter any existing improvements which are located in the Easement Area nor shall Grantee erect any structure, fixture, improvement or obstruction upon the Easement Area without Grantor's written consent. Grantee may place underground utilities, e.g. gas, cable, etc., in the Easement Area provided Grantor provides written consent for the installation of said utilities.

5. Grantee shall be responsible for any maintenance, repairs or replacement work to be performed in the Easement Area. Grantee is permitted to remove trees, limbs, branches or brush as Grantee may deem reasonably necessary to maintain the Easement for its intended use. Grantee shall maintain the Easement Area in a state of good repair including, but not limited to, the removal of snow and ice and shall pay all expenses in connection with maintaining a driveway in the Easement Area.

6. Grantee shall not perform any work in the Easement Area which is of a permanent nature including, but not limited to, the construction of walls, fences, structures, or the reconstruction and/or expansion of the existing paved residential driveway without Grantor's written consent nor plant any trees or shrubs, or store materials in, on or under the Easement Area without

Grantor's written consent. Notwithstanding the above, the Grantee may perform such work in the Easement Area as is appropriate to maintain the existing pavement in a safe and good condition without the Grantor's written consent.

7. After Grantee completes any maintenance or utility work, Grantee shall restore Grantor's property as nearly as possible to its original condition, including grading and reseeding of all disturbed lawn areas and replacement of any damaged landscaping.

8. Grantor expressly reserves the right to use and allow others to use the Easement Area for any purpose including, but not limited to, the construction, operation and maintenance of electric, gas and other utility facilities, under, over and across the Easement Area. Grantee shall relocate the existing driveway, any utility or any other improvement in the Easement Area at Grantor's request if such relocation is necessary to accommodate construction of future public utilities and/or right-of-way on Grantor's land at Grantee's expense.

9. Grantor shall retain all rights to use Grantor's property, as well as the Easement Area which include, but are not limited to, the right to utilize its property for the construction of roadways, sidewalks, driveways, curbs, gutters, public utilities or any other improvement. In such case, Grantor may terminate the Easement Agreement pursuant to paragraph 10 below.

10. Grantor may terminate this Easement Agreement within thirty (30) days written notice upon the occurrence of any of the following:

- A. If Grantor believes that Grantee is in violation of any provision of this Easement Agreement, it shall provide written notice describing the default to Grantee at the address set forth on the first page of this Easement Agreement. The Grantee shall have a period of thirty (30) days from receipt of the notice to cure the default. If Grantee fails to cure the default within this thirty (30) day time period, then in that event, Grantor may terminate this Easement Agreement by recording a Termination Notice, a copy of which shall be provided to Grantee;
- B. If the use of the Easement Area as an access for Grantee's parcel to Garden Drive is abandoned or ceases to be used by Grantee's tenants for a period of thirty (30) days or longer. If the Grantor believes that the Easement Area has been abandoned or has ceased to be used by the

Grantee or Grantee's tenants for a period of thirty (30) days or more, written notice will be provided to Grantee of its intent to terminate the Easement Agreement. If Grantee fails to provide sufficient evidence to Grantor that the Easement Area has not been abandoned or that is continuing to be used by Grantee or by Grantee's tenants, then this Easement Agreement will terminate; or

- C. If Grantee's use of the Easement Area under this Easement Agreement is not compatible with or is inconsistent with the Grantor's right to utilize Grantee's parcel or the Easement Area under paragraph 9 above.

11. The following provisions concern liability, insurance and indemnity:

- A. Grantor shall not be liable to Grantee or Grantee's agents, employees, contractors, invitees, guests, volunteers or tenants, including any guest or invitee of tenants, (hereinafter collectively referred to as "Grantee's agents") for any personal injury, property damage or loss of life, or property caused by or arising out of, or in connection with the use of the Easement Area, or the exercise of any of the rights granted herein.
- B. Grantee shall, at its sole cost and expense, indemnify and hold harmless Grantor, its agents, officers, boards, employees and contractors, (hereinafter collectively referred to as "Indemnitees") from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by, or be asserted against the Indemnitees by reason of any act or omission of Grantee or Grantee's agents, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to or loss of or destruction of tangible or intangible personal property which may arise out, or be in any way connected, directly or indirectly, with the use of the Easement Area by Duke or Duke's tenants, guests, invitees or agents or the exercise of their rights granted herein.
- C. While this Agreement is in effect, Grantee and its contractors who are performing work in the Easement Area, shall maintain or cause to maintain in full force and effect and at Grantee's sole cost and expense, comprehensive general liability insurance with minimum limits of One Million (\$1,000,000) Dollars as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall be written on an occurrence and not on a claims made basis. The coverage amount set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

- D. Grantee shall name Grantor and its respective officers, boards, commissions, employees, agents and contractors, as their respective interest may appear as Additional Insured (herein referred to as the "Additional Insured") on Grantee's policy of insurance, and give Grantor thirty (30) days written notice of any modification and/or cancellation.
- E. Certificates of insurance for each insurance policy required to be obtained by Grantee in compliance with this paragraph shall be filed with Grantor ten (10) days after execution of this Easement and maintained with Grantor annually during the term of this Easement. Grantee shall immediately advise Grantor of any claim or litigation that may result in liability to Grantor.
- F. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Michigan which are satisfactory to Grantor.
- G. Grantee agrees to indemnify and save harmless the Grantor, the Indemnities and Additional Insured from and against the payment of any deductible, self-insured retention and from the payment of any premium on any insurance policy (all of which shall be the responsibilities of Grantee) required to be furnished by this Easement.

12. The Easement hereby granted, and the covenants herein contained, shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns, including all persons or entities owning any interest in Grantee's parcel.

13. This Easement Agreement represents the entire agreement between the parties. It may not be amended, altered or modified unless done so in writing by the entities against whom enforcement of any waiver, change or modification or discharge is sought.

14. All notices and demands required or permitted under this Easement Agreement shall be in writing and shall be served personally or by postage prepaid United States first-class, certified (return receipt requested), or registered mail, addressed to the party at the address indicated on page 1 hereof or to such other place as may be designated by notice given in accordance with this section. Notice shall be deemed to have been given on the earlier of (a) the date when received, or (b) two (2) business days after mailing if mailed in the State of Michigan.

15. Use of the Easement Area by Grantee pursuant to this Easement Agreement shall comply with all applicable federal, state and local laws.

16. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Michigan that are applicable to agreements made and to be performed in that State.

17. Any waiver of any provision of this Easement Agreement shall not be controlling, nor shall it prevent or estop such party from thereafter enforcing such provision. The failure of any party to insist in any one or more instances upon the strict performance of any of the terms of this Easement Agreement by another party shall not be construed as a waiver or relinquishment for the future of any such provision, and the same shall continue in full force and effect.

18. No provision in this Easement Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted the provision.

19. If any party commences an action against another party as the result of a breach or alleged breach of this Easement Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

20. Nothing in this Easement Agreement constitutes, nor shall the same be construed, as a waiver of any governmental immunity provided to the City, its agents, employees and officers provided for under common law or statute.

21. This Easement Agreement and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original but all of which shall constitute one and the same instrument.

The undersigned have affixed their signatures this _____ day of _____, 2010.

GRANTOR:

CITY OF PORTAGE, a Michigan
Municipal Corporation

By: _____
Maurice S. Evans
Its: City Manager

STATE OF MICHIGAN)
) ss
COUNTY OF KALAMAZOO)

On this _____ day of _____, 2009 before me personally came the above named Maurice S. Evans to me personally known, who being duly sworn, did for himself say that he is the City Manager of the municipal corporation named in and who executed the within instrument and that said instrument was signed on behalf of said corporation by authority of its City Council; and said Maurice S. Evans acknowledges said instrument to be the free act and deed of said municipal corporation.

_____, Notary Public
Kalamazoo County, Michigan
My Commission Expires: _____
Acting in Kalamazoo County, Michigan

GRANTEE::

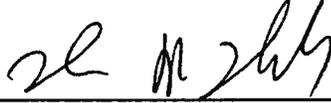
DUKE BARRINGTON LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED
PARTNERSHIP

By: Residential Opportunities
Development, LLC
By: Residential Opportunities, Inc.
Its: Sole Member

By: 
Scott Schrum
Its: Executive Director

STATE OF MICHIGAN)
) ss
COUNTY OF KALAMAZOO)

On this 22 day of September, 2010 before me personally came the above named Scott Schrum to me personally known, who being duly sworn, did for himself say that he is the Executive Director of the limited liability company named in and who executed the within instrument and that said instrument was signed on behalf of said limited liability company and said Scott Schrum acknowledges said instrument to be the free act and deed of said limited liability company.

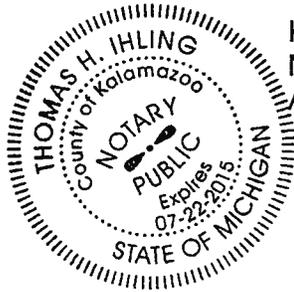


, Notary Public

Kalamazoo County, Michigan

My Commission Expires: July 22, 2015

Acting in Kalamazoo County, Michigan



PREPARED BY:

Randall L. Brown
City Attorney
1662 East Centre Avenue
Portage, MI 49002
Portage, MI 49024
Phone: (269) 323-8812
Fax: (269) 323-0055

RETURN AFTER RECORDING TO:

Randall L. Brown
City Attorney
1662 East Centre Avenue
Portage, MI 49002
Phone: (269) 323-8812
Fax: (269) 323-0055

Z:\Jody\PORTAGEVAGREEMEN\Easement - Right of Way Agreement Barrington Woods CLEAN.091310.wpd

SECTION 15-3-11 BEG AT C 1/4 POST SEC 15, TH W 334.31 FT, TH NWLY 165 FT, TH N 54 DEG E APPROX 745 FT, TH S 52 DEG E 944.16 FT, TH W TO THE C 1/4 POST AND POB, EXC GARDEN LANE RD ROW. 8.43 AC - WELL SITE & BI-CENTENNIAL PARK.;SECTION 15-3-11 BEG 132 FT W OF N 1/4 POST SEC 15, TH CONT W ALG N LI OF SEC 15 656 FT TO ELY LI NYC RR ROW, TH SWLY ALG SD ROW TO S BANK OF PORTAGE CREEK, TH NELY ALG SD BANK 298.08 FT, TH E ALG SD BANK 49 FT TO A POINT, TH S ALG PRIVATE ROW 1179.91 FT, TH SELY 127.87 FT, TH S 57 DEG E 450.29 FT, TH N 54 DEG E 637.87 FT, TH N 51 DEG W 196.73 FT, TH N TO POB. 46.35 AC BI-CENTENNIAL PARK.SEC 15-3-11 BEG AT PT ON N&S1/4 LI SEC 15 447.5 FT N OF C1/4 POST SD SEC TH S 54 DEG 2 MIN W 501 FT TH N 25 DEG 55 MIN W 161.7 FT TH N 57 DEG 11 MIN W 66.15 FT TH N 54 DEG 34 MIN E 673.4 FT TH SELY 221.28 FT TH S 54 DEG 02 MIN W 240.4 FT TO PL OF BEG. 3.11 AC BI-CENTENNIAL PARK.SEC 15-3-11 BEG AT C1/4 POST SEC 15 TH S 495 FT TH E 1320 FT TH N 188.2 FT TH NWLY 528.56 FT TH W 927.69 FT TO PL OF BEG. 11.87 AC - WELL SITE.

Parcel A:

A Part of Lot 328 in the plat of "Lakewood Homesites", in Section 15, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, being more particularly described as follows: Commencing at the Northeast corner of Lot 328 in the plat of "Lakewood Homesites", in Section 15, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, as recorded in Liber 12 of Plats on Page 20 in the Register of Deeds office for Kalamazoo County, Michigan, thence South 89°53' West, along the North line of said Lot 328 to the point being 49.5 feet Westerly of the East line of said Lot 328; thence South 0°06' East, parallel with and 49.5 feet Westerly of the East line of said Lot 328, to a point being 46.0 feet Southerly of the North line of said Lot 328, said point being the place of beginning; thence South 0°06' East, parallel with and 49.5 feet Westerly of the East line of said Lot 328, 121.00 feet; thence South 89°53' West, parallel with the North line of said Lot 328, 230.00 feet; thence South 61°58'55" West, 46.97 feet; thence South 89°53' West, parallel with the North line of said Lot 328, 50.00 feet to the point being 371.00 feet Westerly of the East line of said Lot 328; thence North 0°06' West parallel with and 371.0 feet Westerly of the East line of said Lot 328, 130.00 feet; thence North 57°50'50" East 24.47 feet to a point being 46.0 feet Southerly of the North line of said Lot 328; thence North 89°53' East parallel with and 46.0 feet Southerly of the North line of said Lot 328, 300.76 feet to the place of beginning.

Parcel B:

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Parcel D:

Together with a 22 foot wide easement for ingress and egress, for Parcels A, B and C, to be shared in common with others extending 11.00 feet, as measured at right angles on each side of the following described centerline: Commencing at the Northeast corner of Lot 328 in the Plat of "Lakewood Homesites", in Section 15, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, as recorded in Liber 12 of Plat on Page 20, in the Register of Deeds Office for Kalamazoo County, Michigan; thence South 89° 53' West along the North line of said Lot 328 to a point being 49.5 feet Westerly of the East line of said Lot 328; thence South 0°06' East parallel with and 49.5 feet Westerly of the East line of said Lot 328, 167.00 feet to the place of beginning; thence South 89°53' West parallel with the North line of said Lot 328, 230.00 feet; thence South 61° 58'55" West 46.97 feet; thence South 89°53' West parallel with the North line of said Lot 328, 50.00 feet to a point being 371.0 feet Westerly of the East line of said Lot 328; thence North 0°06' West parallel with and 371.0 feet Westerly of the East line of said Lot 328, 130.00 feet; thence North 57°50'50" East 24.47 feet to a point being 46.0 feet Southerly of the North line of said Lot 328 for the place of ending.

Act 288 of 1967 and Act 591 of 1996 of the Michigan Public Acts should be checked to see that any property conveyance does not violate these acts.

SHEET 1 OF 1

SKETCH OF DESCRIPTION

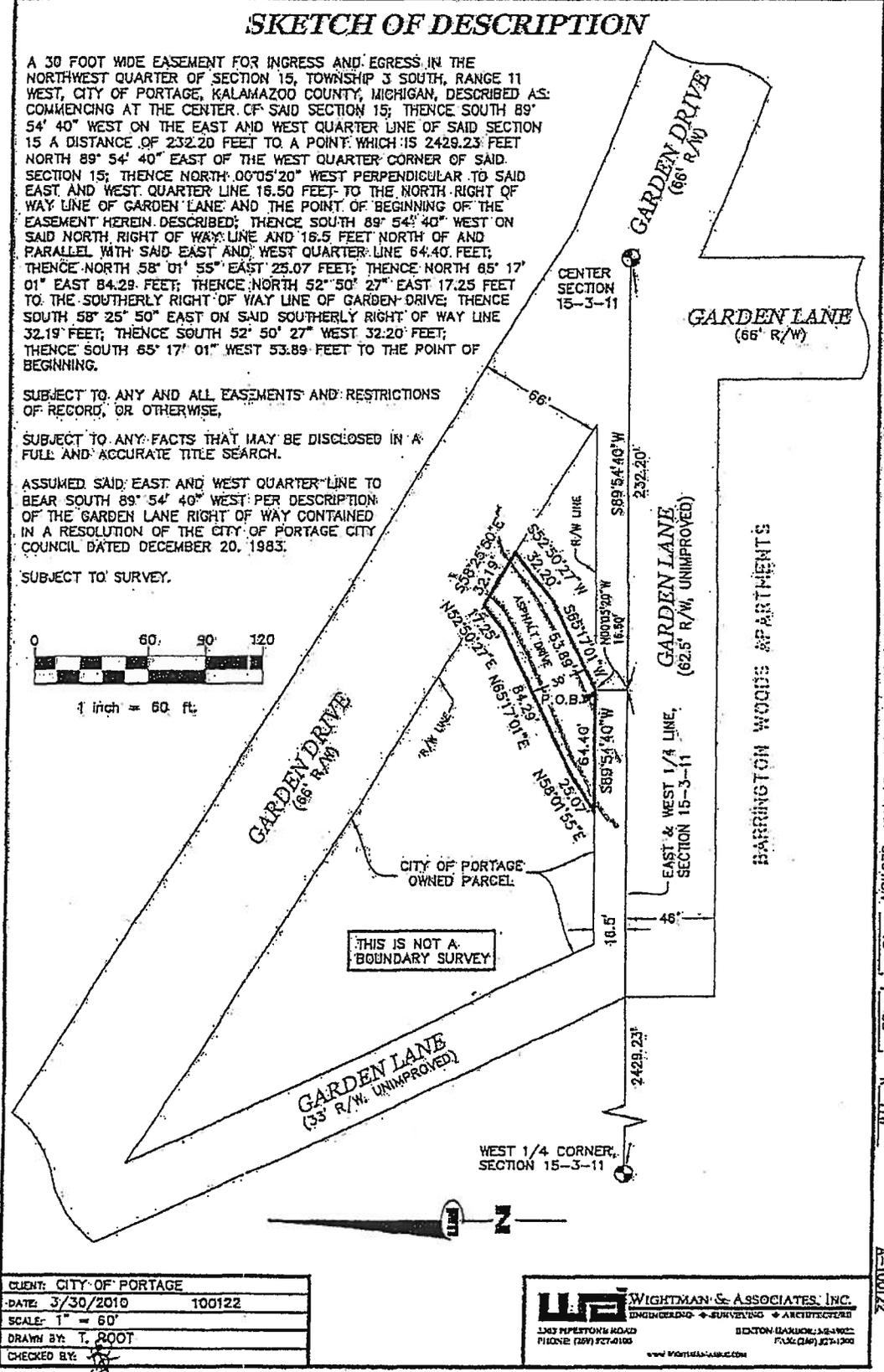
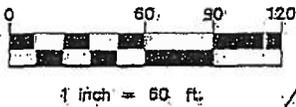
A 30 FOOT WIDE EASEMENT FOR INGRESS AND EGRESS IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE CENTER OF SAID SECTION 15; THENCE SOUTH 89° 54' 40" WEST ON THE EAST AND WEST QUARTER LINE OF SAID SECTION 15 A DISTANCE OF 232.20 FEET TO A POINT WHICH IS 2429.23 FEET NORTH 89° 54' 40" EAST OF THE WEST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 00° 05' 20" WEST PERPENDICULAR TO SAID EAST AND WEST QUARTER LINE 16.50 FEET TO THE NORTH RIGHT OF WAY LINE OF GARDEN LANE AND THE POINT OF BEGINNING OF THE EASEMENT HEREIN DESCRIBED; THENCE SOUTH 89° 54' 40" WEST ON SAID NORTH RIGHT OF WAY LINE AND 16.5 FEET NORTH OF AND PARALLEL WITH SAID EAST AND WEST QUARTER LINE 64.40 FEET; THENCE NORTH 58° 01' 55" EAST 25.07 FEET; THENCE NORTH 65° 17' 01" EAST 84.29 FEET; THENCE NORTH 52° 50' 27" EAST 17.25 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GARDEN DRIVE; THENCE SOUTH 58° 25' 50" EAST ON SAID SOUTHERLY RIGHT OF WAY LINE 32.19 FEET; THENCE SOUTH 52° 50' 27" WEST 32.20 FEET; THENCE SOUTH 65° 17' 01" WEST 53.89 FEET TO THE POINT OF BEGINNING.

SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD, OR OTHERWISE.

SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED IN A FULL AND ACCURATE TITLE SEARCH.

ASSUMED SAID EAST AND WEST QUARTER LINE TO BEAR SOUTH 89° 54' 40" WEST PER DESCRIPTION OF THE GARDEN LANE RIGHT OF WAY CONTAINED IN A RESOLUTION OF THE CITY OF PORTAGE CITY COUNCIL DATED DECEMBER 20, 1983.

SUBJECT TO SURVEY.



CITY OF PORTAGE, KALAMAZOO COUNTY SECTION 15, T 3S, R 11W A-100122

CLIENT: CITY OF PORTAGE	
DATE: 3/30/2010	100122
SCALE: 1" = 60'	
DRAWN BY: T. ROOT	
CHECKED BY:	

WIGHTMAN & ASSOCIATES, INC.
 ENGINEERING • SURVEYING • ARCHITECTURE
 1313 HOPKINSON ROAD BOSTON (KALAMAZOO) OFFICE
 PHONE: (269) 727-0100 FAX: (269) 727-1000
 www.wightman-inc.com

LICENSE AGREEMENT TO LOCATE PERSONAL PROPERTY IN CITY RIGHT-OF-WAY

This License Agreement is made and entered into this 22 day of September, 2010, by and between the City of Portage, a Michigan municipal corporation, organized under the laws of the State of Michigan, with offices at 7900 South Westnedge Avenue, Portage, Michigan 49002 (hereinafter "City") and Duke Barrington Limited Dividend Housing Association Limited Partnership, 1100 South Rose Street, Kalamazoo, Michigan 49007 (hereinafter "Duke");

WHEREAS, in 1983, City realigned Garden Lane so that a new public street named Garden Drive was created from Garden Lane to Lovers Lane;

WHEREAS, the unimproved portion of Garden Lane (herein referred to as "Unimproved Garden Lane") was "temporarily terminated" as a public street but City retained all rights in the land;

WHEREAS, Unimproved Garden Lane is not being used by the general public for vehicular travel or pedestrian travel and has not been so used since 1983;

WHEREAS, Duke has located two garbage receptacles, a screening fence, concrete sidewalk, a 22 foot wide asphalt driveway, a light pole and a concrete pad (collectively the "improvements") on the Unimproved Garden Lane for the use of its tenants who occupy residential units in the development owned by Duke known as "Barrington Woods" which is described in the attached Exhibit A;

WHEREAS, the improvements are situated on Unimproved Garden Lane as shown in the attached Exhibit B;

WHEREAS, Duke desires continued use of the improvements; and

WHEREAS, contemporaneous with execution of this License Agreement to Locate Personal Property in City Right-of-Way, the parties have entered into an Easement and Right-of-Way Agreement for Ingress and Egress which grants Duke a right-of-way over City owned land at 7451 Garden Lane which abuts the Unimproved Garden Lane to the north.

WHEREAS, the City will not be expending any public funds for Duke's maintenance or repair of the improvements;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. City grants to Duke a personal, revocable, non-exclusive license (hereinafter "License") to use, locate and maintain the improvements presently located on Unimproved Garden Lane.

2. This License is granted for the sole use, benefit and enjoyment of Duke and is given for the sole purpose of allowing the use of the improvements at all reasonable times for their intended use. There is no intention to grant third party beneficiary rights to any tenant (or their invitees or guests) by the grant of this License Agreement.

3. Duke shall, at its own expense, keep the improvements in good condition and repair and keep the surrounding area free of debris, obnoxious fumes or other condition not appropriate to the surrounding area. City may request Duke to conduct repair and maintenance on the improvements and/or remove any debris and/or odors from the area. City may perform the required work and charge Duke for all time and materials expended if, after thirty (30) days written notice to Duke, Duke fails or refuses to perform or complete the requested work.

4. Duke shall be responsible for removal of snow and ice in any area used by Duke and where the improvements are located.

5. City shall not be required to incur any cost or expense as a result of Duke's exercise of the rights granted by this License.

6. City expressly reserves the right to use and allow others to use Unimproved Garden Lane for any purpose including, but not limited to, the construction, operation and maintenance of electric, gas and other utility facilities, under, over and across Unimproved Garden Lane. Duke shall, at Duke's sole cost and expense, relocate the improvements (or any one of them) at City's request if such relocation is necessary to accommodate construction of future public utilities and/or right-of-way on City's land. Nothing contained herein shall be interpreted or construed to grant Duke or any of Duke's transferees or assigns any property interest in Unimproved Garden Lane. The City retains all property rights in and to Unimproved Garden Lane including, but not limited to, the right to utilize Unimproved Garden Lane for construction of roadways, sidewalks, driveways, curbs, gutters, public utilities or any other improvement. In such case, City may terminate this License pursuant to paragraph 9 below.

7. Other than the improvements identified in Attachment B, Duke shall not perform any further work on Unimproved Garden Lane which is of a permanent nature including, but not limited to, the construction of walls, additional fences, structures, or the paving of a residential driveway without City's written consent, nor plant any trees or shrubs, or store materials in, on or under Unimproved Garden Lane without City's written consent. Notwithstanding the above, the Grantee may perform such work on Unimproved Garden Lane as is appropriate to maintain the existing pavement in a safe and good condition without the City's written consent.

8. In the event Duke conveys any of its right, title and interest in the Duke property, Duke's successor in interest shall, after approval by the City, thereafter assume all rights and obligations herein. Duke's rights under this License are subject to any prior easements, licenses, leases, or other interest in the land previously granted by City or its predecessors in title.

9. City may terminate this License upon thirty (30) days written notice upon occurrence of any of the following: A) If Grantor believes that Grantee is in violation of any provision of this License Agreement, it shall provide written notice describing the default to Grantee at the address set forth on the first page of this License Agreement. The Grantee shall have a period of thirty (30) days from receipt of the notice to cure the default. If Grantee fails to cure the default within this thirty (30) day time period, then in that event, Grantor may terminate this License Agreement in writing; B) If the use of the improvements identified in Attachment B by Duke's tenants ceases for a period of thirty (30) days or longer. If the Grantor believes that the Improvements have been abandoned or has ceased to be used by the Grantee or Grantee's tenants for a period of thirty (30) days or more written notice will be provided to Grantee of its intent to terminate the License Agreement. If Grantee fails to provide sufficient evidence to Grantor that the Improvements have not been abandoned or are continuing to be used by Grantee or by Grantee's tenants, then Grantor may terminate this License Agreement in writing; C) If Duke's use of Unimproved Garden Lane under this License is not compatible with or is inconsistent with the City's right to utilize Unimproved Garden Lane under paragraph 6 above; or D) If City permanently vacates Unimproved Garden Lane. If the License is terminated for any reason, Duke, at its sole cost and expense, shall remove all improvements from Unimproved Garden Lane unless fee ownership to the area upon which the improvements are located has passed to Duke.

10. The following provisions concern liability, insurance and indemnity:

- A. City shall not be liable to Duke or Duke's agents, employees, contractors, invitees, guests, volunteers or tenants, including any guest or invitee of tenants, (hereinafter collectively referred to as "Duke's agents") for any personal injury, property damage or loss of life, or property caused by or arising out of, or in connection with the use of Unimproved Garden Lane, or the improvements thereon and the rights granted herein.
- B. Duke shall, at its sole cost and expense, indemnify and hold harmless City, its agents, officers, boards, employees and contractors, (hereinafter collectively referred to as "Indemnitees") from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses

and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by, or be asserted against the Indemnitees by reason of any act or omission of Duke or Duke's agents, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to or loss of or destruction of tangible or intangible personal property which may arise out, or be in any way connected, directly or indirectly, with the use of Unimproved Garden Lane by Duke or Duke's tenants, guests, invitees or agents or arising out of or the rights granted herein.

- C. While this Agreement is in effect, Duke and its contractors who are performing work on Unimproved Garden Lane, shall maintain or cause to maintain in full force and effect and at Duke's sole cost and expense, comprehensive general liability insurance with minimum limits of One Million (\$1,000,000) Dollars as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall be written on an occurrence and not on a claims made basis. The coverage amount set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- D. Duke shall name City and its respective officers, boards, commissions, employees, agents and contractors, as their respective interest may appear as Additional Insured (herein referred to as the "Additional Insured") on Duke's policy of insurance, and give City thirty (30) days written notice of any modification and/or cancellation.
- E. Certificates of insurance for each insurance policy required to be obtained by Duke in compliance with this paragraph shall be filed with City ten (10) days after execution of this License and maintained with City annually during the term of this License. Duke shall immediately advise City of any claim or litigation that may result in liability to City.
- F. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Michigan which are satisfactory to City.
- G. Duke agrees to indemnify and save harmless the City, the Indemnities and Additional Insured from and against the payment of any deductible, self-insured retention and from the payment of any premium on any insurance policy (all of which shall be the responsibilities of Duke) required to be furnished by this License.

11. This License represents the entire agreement between the parties. It may not be amended, altered or modified unless done so in writing by the entities against whom enforcement of any waiver, change or modification or discharge is sought.

12. All notices and demands required or permitted under this License shall be in writing and shall be served personally or by postage prepaid United States first-class, certified (return receipt requested), or registered mail, addressed to the party at the address indicated on page 1 hereof or to such other place as may be designated by notice given in accordance with this section. Notice shall be deemed to have been given on the earlier of (a) the date when received, or (b) two (2) business days after mailing if mailed in the State of Michigan.

13. Use of Unimproved Garden Lane by Duke pursuant to this License shall comply with all applicable federal, state and local laws.

14. This License shall be governed by and construed in accordance with the laws of the State of Michigan that are applicable to agreements made and to be performed in that State.

15. Any waiver of any provision of this License shall not be controlling, nor shall it prevent or estop such party from thereafter enforcing such provision. The failure of any party to insist in any one or more instances upon the strict performance of any of the terms of this License by another party shall not be construed as a waiver or relinquishment for the future of any such provision, and the same shall continue in full force and effect.

16. No provision in this License is to be interpreted for or against any party because that party or that party's legal representative drafted the provision.

17. If any party commences an action against another party as the result of a breach or alleged breach of this License, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

18. Nothing in this License constitutes, nor shall the same be construed, as a waiver of any governmental immunity provided to the City, its agents, employees and officers provided for under common law or statute.

19. This License and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures this _____ day of _____, 2010.

LICENSOR:

CITY OF PORTAGE, a Michigan
Municipal Corporation

By: _____
Maurice S. Evans
Its: City Manager

STATE OF MICHIGAN)
) ss
COUNTY OF KALAMAZOO)

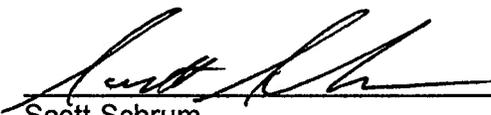
On this _____ day of _____, 2010 before me personally came the above named Maurice S. Evans to me personally known, who being duly sworn, did for himself say that he is the City Manager of the municipal corporation named in and who executed the within instrument and that said instrument was signed on behalf of said corporation by authority of its City Council; and said Maurice S. Evans acknowledges said instrument to be the free act and deed of said municipal corporation.

, Notary Public
Kalamazoo County, Michigan
My Commission Expires: _____
Acting in Kalamazoo County, Michigan

LICENSEE:

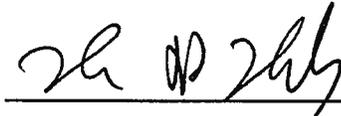
Duke Barrington Limited Dividend Housing
Association Limited Partnership

By: Residential Opportunities Development, LLC
By: Residential Opportunities, Inc.
Its: Sole Member

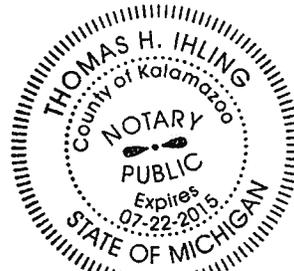
By: 
Scott Schrum
Its: Executive Director

STATE OF MICHIGAN)
) ss
COUNTY OF KALAMAZOO)

On this 22 day of September, 2010 before me personally came the above named Scott Schrum to me personally known, who being duly sworn, did for himself say that he is the Executive Director of the limited liability company named in and who executed the within instrument and that said instrument was signed on behalf of said limited liability company and said Scott Schrum acknowledges said instrument to be the free act and deed of said limited liability company.


_____, Notary Public
Kalamazoo County, Michigan
My Commission Expires: July 22, 2015
Acting in Kalamazoo County, Michigan

PREPARED BY:
Randall L. Brown
City Attorney
1662 East Centre Avenue
Portage, MI 49002
Portage, MI 49024
Phone: (269) 323-8812
Fax: (269) 323-0055



Z:\Jody\PORTAGEVAGREEMEN\License Agreement Barrington Woods CLEAN.091310.wpd

EXHIBIT A

Parcel A:

A Part of Lot 328 in the plat of "Lakewood Homesites", in Section 15, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, being more particularly described as follows: Commencing at the Northeast corner of Lot 328 in the plat of "Lakewood Homesites", in Section 15, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, as recorded in Liber 12 of Plats on Page 20 in the Register of Deeds office for Kalamazoo County, Michigan, thence South 89°53' West, along the North line of said Lot 328 to the point being 49.5 feet Westerly of the East line of said Lot 328; thence South 0°06' East, parallel with and 49.5 feet Westerly of the East line of said Lot 328, to a point being 46.0 feet Southerly of the North line of said Lot 328, said point being the place of beginning; thence South 0°06' East, parallel with and 49.5 feet Westerly of the East line of said Lot 328, 121.00 feet; thence South 89°53' West, parallel with the North line of said Lot 328, 230.00 feet; thence South 61°58'55" West, 46.97 feet; thence South 89°53' West, parallel with the North line of said Lot 328, 50.00 feet to the point being 371.00 feet Westerly of the East line of said Lot 328; thence North 0°06' West parallel with and 371.0 feet Westerly of the East line of said Lot 328, 130.00 feet; thence North 57°50'50" East 24.47 feet to a point being 46.0 feet Southerly of the North line of said Lot 328; thence North 89°53' East parallel with and 46.0 feet Southerly of the North line of said Lot 328, 300.76 feet to the place of beginning.

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Vicinity Map

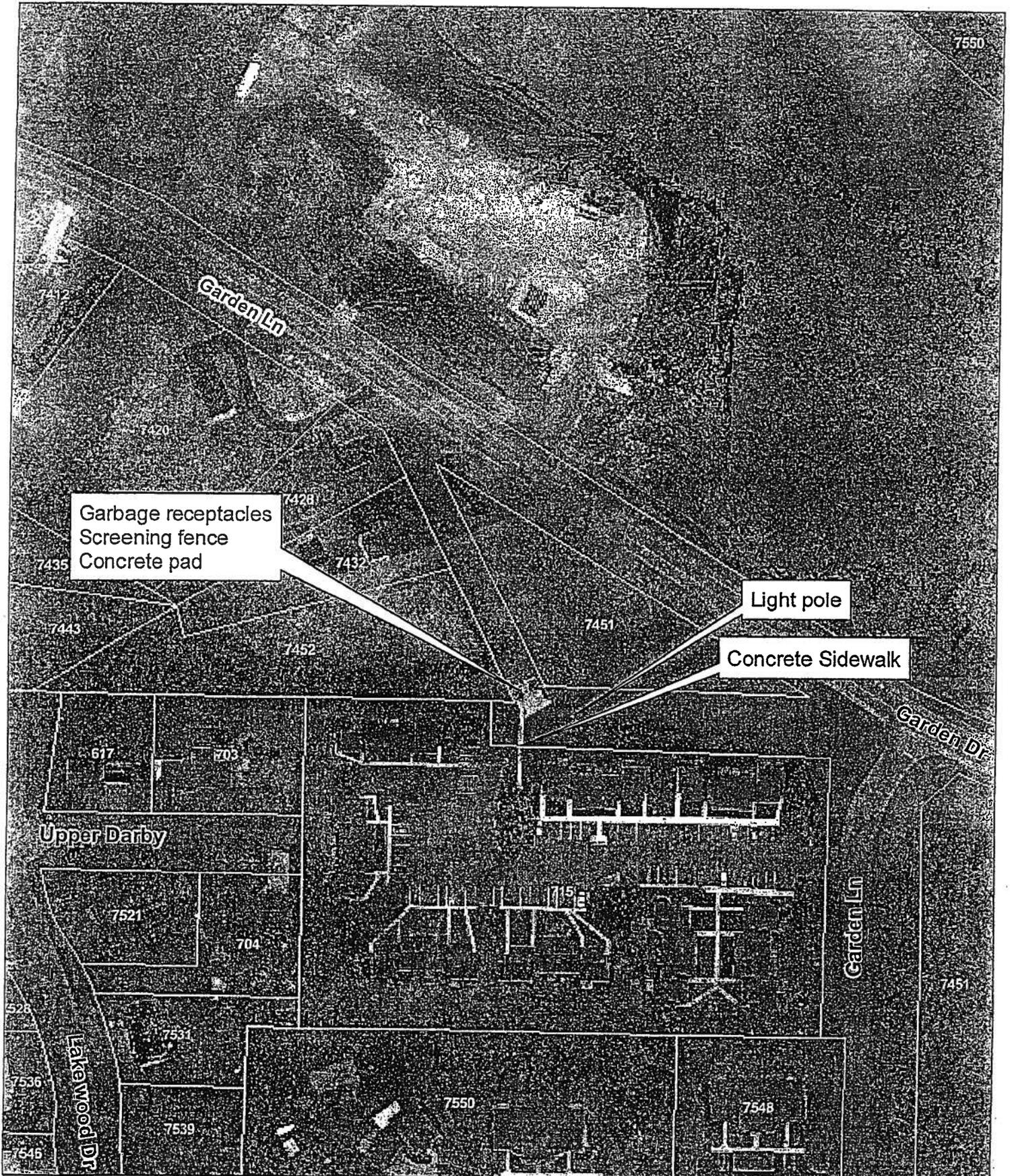
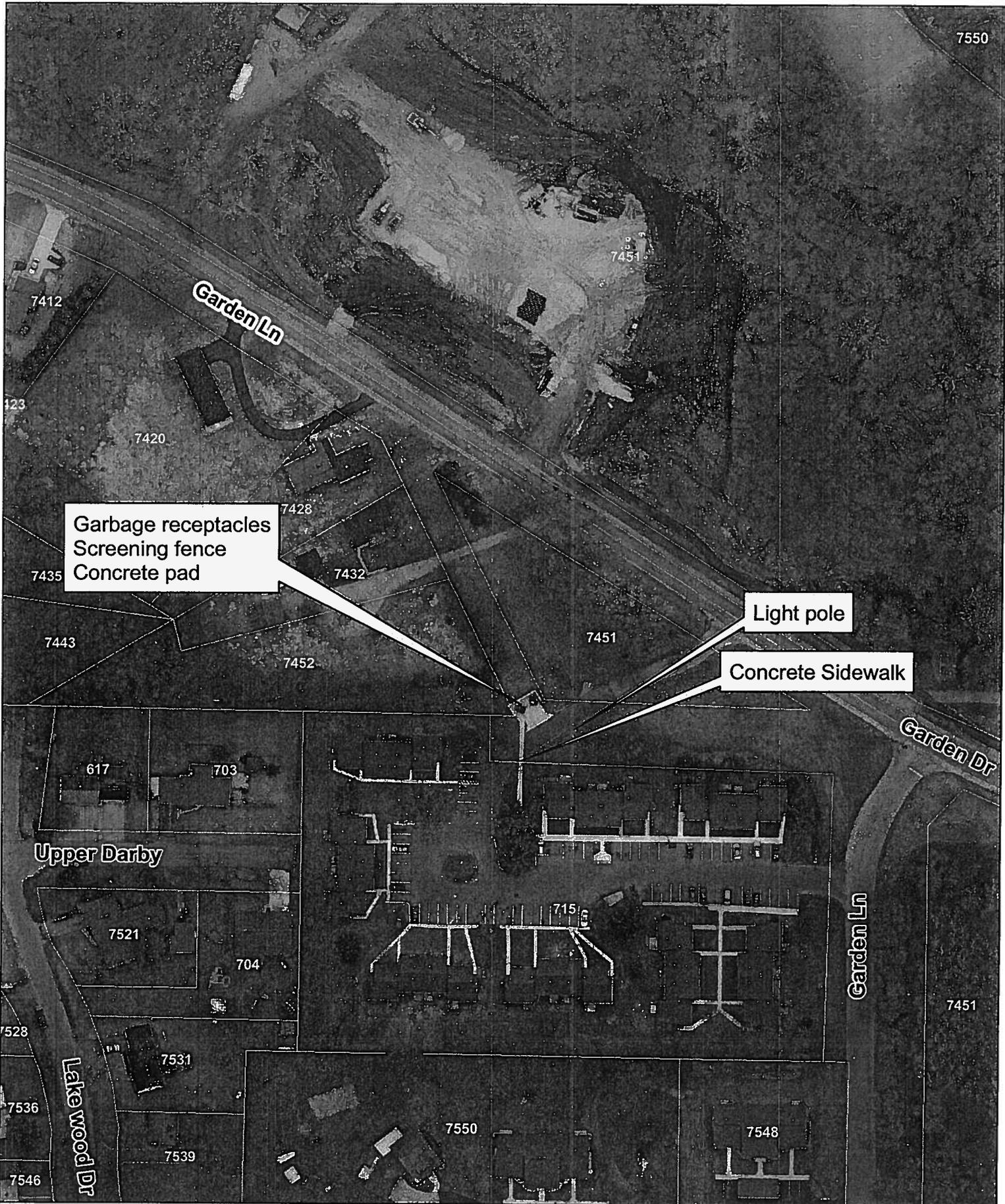


Exhibit A Vicinity Map



CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 12, 2010

FROM: Maurice S. Evans, City Manager 

SUBJECT: Workers' Compensation Excess Insurance and Third Party Administration Contracts

ACTION RECOMMENDED: That City Council:

- a. award a two-year contract renewal to Safety National Casualty Corporation, the low bidder, for workers' compensation excess insurance coverage for an annual fee of \$39,567 plus payroll adjustments;
 - b. approve a two-year contract renewal with Eagle Claims Management for workers' compensation third party administration for an annual fee of \$10,268;
- and authorize the City Manager to execute all documents related to these contract renewals on behalf of the city.

In October 1993, City Council approved a recommendation by the City Administration to convert workers' compensation coverage from fully insured to self-insured effective December 1, 1993. There are two primary elements associated with a self-insured workers' compensation program: 1) excess insurance and 2) third party administration. Excess insurance provides coverage in the event a catastrophic occurrence exceeds \$400,000, the total of all claims exceed \$1,919,898 in a policy period (two years) or a liability claim is made against the city due to a work-related injury or illness which exceeds \$400,000. The third party administrator is retained to manage workers' compensation claims, process associated medical and indemnity payments, provide claims data and manage litigated claims as directed by the city.

Contracts with the city excess insurance carrier, Safety National Casualty Corporation (SNCC), and the city third party administrator, Eagle Claims Management, will expire on November 30, 2010. Quotes were solicited from excess insurance carriers for two-year contracts. The lowest quote meeting coverage requirements was submitted by the city's current carrier, SNCC, for an annual fee of \$39,567 plus payroll adjustments for each year of the contract. As the city payroll has decreased since the last renewal in 2008, the annual fee prior to payroll adjustments decreased by approximately 10%. Acceptance of the proposed contract renewal with SNCC is recommended for the period of December 1, 2010 - November 30, 2012.

With regard to third party administration, as it is critical that the city retain consistency in workers' compensation claims administration, it is recommended that the city renew the contract with Eagle Claims Management for a two-year period (December 1, 2010 - November 30, 2012) at an annual cost of \$10,268. Total payment to Eagle Claims Management, including commissions from the excess carrier, is 4% less than the past four years. Eagle Claims Management has provided excellent service to the city over the past fifteen years and, as directed by the city, has taken an aggressive approach to case management. City Council approval of a two-year contract with Eagle Claims Management is also recommended.

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 11, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: Water and Wastewater Utility Rate Study

ACTION RECOMMENDED: That Council award a contract for a water and wastewater Utility Rate Study to Utility Financial Solutions, LLC, at a cost not to exceed \$35,500 and authorize the City Manager to execute all documents on behalf of the city.

In recent years, water and sanitary sewer rates have been annually reviewed by the City Administration. Staff recommendations are then evaluated by a citizen committee and submitted to Council for consideration. Although this process worked well in the past, it is believed an independent review of the rationale for establishing utility rates, as well as a review of discounts, caps on certain charges, fees charged for service, flat rate charges, uniformity of rates, etc., is timely and appropriate. The difficulties and challenges of establishing fair and equitable rates, especially in the current trend of declining water and wastewater usage, can best be met through a comprehensive rate evaluation by an experienced and qualified rate consultant.

Specifically, water rates and fees need to be examined in regard to base meter rates and consideration of rates by classification and/or quantity usage. Wastewater rates and charges should also be reviewed in light of the revised City of Kalamazoo billing methodology and financial costs.

As the City Administration is desirous of utilizing results of the rate analysis in discussion with the City Council Utility Rate Committee for consideration of necessary 2011 utility rate adjustments, time is of the essence. Accordingly, as the city purchasing ordinance does not require competitive bids for professional service contracts, staff narrowed the proposal request to a firm considered most familiar with the City of Portage utility rates and the City of Kalamazoo utility rate methodology.

The firm of Utility Financial Solutions, LLC, has previously performed rate analyses for the city and is familiar with the City of Kalamazoo utility rate structure. Staff performed a detailed review process and has determined that the overall experience, project understanding and performance of Utility Financial Solutions, LLC, in similar utility rate studies best meets the city requirements for this study. Utility Financial Solutions, LLC, is capable of meeting the time schedule necessary to complete the study for City Council Utility Rate Committee review.

It is recommended that City Council award a contract for a water and wastewater utility rate study to Utility Financial Solutions, LLC at a cost not to exceed \$35,500 and authorize the City Manager to execute all documents on behalf of the city. Sufficient funds are available in the city's 2010-11 Utility Budget to cover the cost of the study.

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: November 10, 2010

FROM: Maurice S. Evans, City Manager



SUBJECT: 2011 Storm Drainage Improvements Program and Barberry Avenue Sanitary Sewer Rehabilitation

ACTION RECOMMENDED: That City Council award a contract to Hurley & Stewart, LLC, with the low cost proposal for engineering services related to the 2011 Storm Drainage Improvements and Barberry Avenue Sanitary Sewer Rehabilitation in the amount of \$33,000 and authorize the City Manager to execute all documents on behalf of the city.

As part of the 2010-11 Capital Improvement Program, funds were budgeted to investigate and correct storm drainage problem areas indentified during the September 2008 storm event. The September 14, 15 and 16, 2008 storm event deposited between 7.5 and 9 inches of rain in the Portage area and exposed several deficient storm drainage locations. The storm event caused serious flooding throughout the Kalamazoo County area and was classified as a "100-year" storm event, meaning that a rain event of this magnitude has a one-percent chance of occurring in any given year.

Fluctuating groundwater levels, especially on the east side of Portage, impacted the storm water capacity of several areas. Two areas specifically have been budgeted to be addressed in the 2010-11 Capital Improvement Program: Tiffany Avenue/Harvest Lane intersection and the Burt Drive/Austin Court intersection. These areas have been targeted for improvements which will involve enhancing the capacity of the existing infiltration systems through expanding the underground storm water system.

Additionally, funds were bugged in the 2010-11 Capital Improvement Program to investigate and improve portions of the sanitary sewer system along Barberry Avenue to prevent groundwater contamination. This project will test and repair any potential leaking areas in the sanitary sewer system to restore its integrity.

Since these projects are similar in scope, it is cost-efficient to award the engineering services contract to one firm. On October 21, 2010, nine proposals were received for the projects with the lowest cost proposal submitted by Hurley & Stewart, LLC, in the amount of \$33,000. Hurley & Stewart, LLC, have satisfactorily completed similar projects for the city and their proposal best fit the requirements for the necessary engineering services.

It is recommended that City Council award a contract to Hurley & Stewart, LLC, with the low cost proposal for engineering services related to the 2011 Storm Drainage Improvements and Barberrry Avenue Sanitary Sewer Rehabilitation in the amount of \$33,000 and authorize the City Manager to execute all documents on behalf of the city. Funds are available for the expenditure in the Capital Improvement Program project accounts through the sale of Capital Improvement Bonds. A tabulation of proposals is attached for the information of Council.

Attachment

TABULATION OF PROPOSALS
 2011 STORM DRAINAGE IMPROVEMENTS PROGRAM
 BARBERRY AVENUE SANITARY SEWER REHABILITATION

FIRM	PROPOSAL		ESTIMATED PROJECT HOURS			
	<u>DESIGN</u>	<u>CONSTRUCTION</u>	<u>DESIGN</u>	<u>CONSTRUCTION</u>		
		<u>TOTAL</u>		<u>TOTAL</u>		
Hurley & Stewart, LLC 2800 South 11th Street Kalamazoo, MI 49009	\$14,000.00	\$19,000.00	\$33,000.00	200	600	800
Kingscott Associates, Inc. 29 E. Michigan Ave., Suite 335 Kalamazoo, MI 49007	\$17,800.00	\$16,600.00	\$34,400.00	330	323	653
Jones & Henry Engineers Ltd. 4791 Campus Drive Kalamazoo, MI 49008	\$12,300.00	\$23,355.00	\$35,655.00	153	579	732
Wightman Jones, Inc. 264 Western Avenue Allegan, MI 49010	\$19,280.00	\$18,520.00	\$37,800.00	250	578	828
Midwest Civil Engineers Inc. 13560 -- 76th Street South Haven, MI 49090	\$24,900.00	\$18,500.00	\$43,400.00	423	394	817
Abonmarche 95 W. Main Street Benton Harbor, MI 49022	\$21,250.00	\$23,150.00	\$44,400.00	250	515	765
Driesenga & Associates, Inc. 552 South 8th Street Kalamazoo, MI 49009	\$17,995.00	\$33,755.00	\$51,750.00	231	757	988
Prein&Newhof 7123 Stadium Drive Kalamazoo, MI 49009	\$19,280.00	\$38,450.00	\$57,730.00	230	560	790
Fishbeck, Thompson, Carr & Huber, Inc. 4775 Campus Drive Kalamazoo, MI 49008	\$29,700.00	\$36,872.00	\$66,572.00	294	646	940