

OWOSSO CITY COUNCIL

AUGUST 4, 2008

7:30 P.M.

PRESIDING OFFICER: MAYOR MICHAEL E. BRUFF
OPENING PRAYER: GERRY ALCORN
PLEDGE OF ALLEGIANCE: COUNCILPERSON MICHAEL N. CLINE
PRESENT: Mayor Michael E. Bruff, Mayor Pro-Tem Mark D. Owen, Councilpersons Michael N. Cline, Joni M. Forster, Benjamin R. Frederick, Gary W. Martenis, and Jason D. Simmons.
ABSENT: None.

APPROVE AGENDA

Motion by Councilperson Martenis to approve the agenda as presented with the addition of a special presentation by Burton Fox.

Motion supported by Councilperson Simmons and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF SPECIAL MEETING OF JULY 21, 2008

Motion by Councilperson Forster to approve the Minutes of the Regular Meeting of July 16, 2008 as presented.

Motion supported by Councilperson Simmons and concurred in by unanimous vote.

SPECIAL PRESENTATION

PRESENTATION OF FLAG

Burton Fox presented a flag flown over the State Capitol on September 11, 2007 to Mayor Bruff. Mr. Fox indicated the flag had been obtained by Councilperson Frederick to be flown over the refurbished Veteran's Plaza in Fayette Square but had been replaced by a larger one.

PUBLIC HEARINGS

PUBLIC HEARING - ORDINANCE AMENDMENT

The public hearing was held to receive citizen comment regarding proposed ordinance amendment to Chapter 13, *Fire Prevention and Protection*, Article I, *In General*, Sections 13-4 (f) & (g) and 1305 (c) & (d) of the Code of Ordinances of the City of Owosso, Michigan.

Mayor Bruff explained the rules for comment during a public hearing, reminding everyone that comments should be limited to the ordinance amendment only.

Roberta Whittle, 1012 South Chipman Street, relayed her negative experience with a neighbor in regard to burning and indicated she felt there was a safety issue in regard to the smoke.

Mayor Bruff reiterated his request that comments be limited to the ordinance amendment at hand.

George Sode, 1251 North Shiawassee Street, inquired about enforcement of the ordinance indicating he was in favor of stricter enforcement but did not agree with the idea of fining offenders on the first notice.

Teresa Skaryd, 601 Ryan Street, inquired as to whether a permit was required to install a smoke detector.

Shelah Hockman, 705 Campbell Drive, indicated she felt the amendment did not go far enough and requested it be tabled. She said she knew that Council had changed ordinances in the past without direction from a citizen petition and felt that the Council should act in this situation.

Daniel Brayshaw, 312 Randolph Street, indicated he believes there is nothing wrong with burning and people are just complaining. He felt people should be able to burn as long as they do not burn garbage or treated wood.

Mayor Bruff again reminded the audience to keep comments to the ordinance amendment only.

Laura Rolando, 1013 South Chipman Street, expressed her concern that people did not know the details of the ordinance amendment. She also inquired as to whether there was a tracking system in place to record the number of warnings issued at a particular location (it was noted there is such a system).

Councilperson Frederick indicated a part of the intent of the ordinance amendment was to take away the argument that people are ignorant of the ordinance with warnings given to multiple members of a family. He further indicated he wanted any written warning to contain the text of the ordinance.

Paul Sutphen, 309 State Street, relayed a circumstance in which a law was changed and 1200 warnings were given one month followed by 700 tickets the next month, resulting in an effective change in the behavior in question.

Diane Stokes, owner of 1018 South Street, expressed her desire to see the ordinance remain the same and enforcement increased. She further stated curbside brush pick up would not be convenient for her.

George Hebert, 411 Curwood Drive, expressed his feeling the proposed amendment would muddle an already unclear ordinance.

Michael Ferich, 1349 West King Street, indicated he was putting up with smoke from a neighbor's fire and no one seemed to care. He also stated he felt more stringent rules needed to be in place to allow the inspection of a fire and further, a household should be billed if the fire department is required to extinguish a fire. Lastly, he mentioned options for disposing of brush and garbage.

Betty Coon, 1204 Palmer Avenue, remarked on the long journey to get to tonight's public hearing and indicated she hoped Council would have the wisdom to do what was right and that she was thankful for the right to burn.

Robert Coon, 1204 Palmer Avenue, indicated burning has been allowed ever since he can remember and it has been voted on a number of times in favor of burning. He also indicated he felt the amendment was good and asked that the City develop a burning container that would effectively incinerate trash without producing lots of smoke.

Councilperson Martenis reminded those in attendance he had proposed a burning ban but it had been turned down by Council.

Mayor Bruff commented on his feeling the amendment would weaken the ordinance and that a system of fines was already in place. He indicated he also felt the amendment would further muddle an already cloudy law.

There was a brief discussion regarding what City employees could issue citations for burning violations.

Councilperson Frederick indicated he felt the proposed amendment strengthened the current ordinance but allowed for some discretion on the part of the responding officer. He further indicated he was not against the idea of fining a citizen upon the first offense.

There was general discussion regarding penalties, increased enforcement, creating a clearer ordinance, concerns with the obnoxious odor portion of the ordinance, asking officers to issue a ticket every time they go out on a burning related call, the current practice in enforcement of the ordinance, adding a \$50 fine for the first offense, and requiring a written warning.

Motion by Councilperson Frederick to amend the ordinance amendment to reflect a \$50.00 fine issued in conjunction with a written warning upon first offense.

Motion supported by Councilperson Simmons.

Roll Call Vote.

AYES: Councilpersons Forster, Frederick, Simmons, Cline, and Mayor Bruff.

NAYS: Mayor Pro-Tem Owen and Councilperson Martenis.

There was further discussion regarding the discretion of responding officers. City Manager Fivas noted the proposed wording would allow responding officers to make a judgment call, pointing out every odor is not obnoxious and not all smoke is excessive. Officers will continue to have discretion as to what will garner a fine. Mayor Bruff expressed his concern the proposed amendment would force officers to issue a ticket every time.

Whereas, the City Council, after due and legal notice, has met and having heard all interested persons, motion by Councilperson Forster that the following Ordinance be adopted:

ORDINANCE NO. 701

AN ORDINANCE TO AMEND CHAPTER 13, *FIRE PREVENTION AND PROTECTION*, ARTICLE I, IN GENERAL, SECTIONS 13-4 (F) & (G) AND 13-5 (C) & (D) OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Sections 13-4 (f) & (g) and 13-05 (c) & (d) of Chapter 13, Fire Prevention and Protection, Article I, In General, is hereby amended to read as follows:

Sec. 13-4. Open fires.

Open fires are prohibited in the city except in accordance with the following provisions:

- (1) The following are definitions for the words and phrases used in this section:

Approved container is defined as: a container constructed of metal or masonry with a metal covering device with openings no larger than three-quarters (3/4) inch with draft holes near the bottom no larger than three-quarters (3/4) inch.

Bonfire is defined as: an outdoor fire exceeding the size of a recreational fire and used for ceremonial purposes.

Open fire means any fire outside of a building or structure involving any type of combustible material, whether for cooking, pleasure or any other purpose, located anywhere within the city, on public or private property.

Outdoor cooking apparatus means a charcoal grill, camping stove or similar apparatus designed exclusively for cooking food.

Recreational fire means any fire such as a campfire contained in a fire pit or portable manufactured fire container for the purpose of recreational and personal enjoyment.

Fire pit means a structure with the following components:

- a. The diameter of the pit shall not exceed three (3) feet;
- b. The depth of the pit shall be one (1) to two (2) feet deep; and
- c. The rim of the pit shall be lined with rock, concrete, brick or steel that is six (6) inches wide all around the perimeter.

Waste material is defined as: paper and paper products excluding diapers; clean clear unpainted unfinished untreated wood and wood products excluding particle board and similar products; and yard waste.

- (b) Incineration of waste material, outside of one- or two-family dwellings in the city, shall be permitted if done in accordance with the following provisions:

- (1) No such burning may be within twenty-five (25) feet of an existing structure or property line, nor upon the paved portion of any street. Provided, however, in the case of a lot wherein the above dimensions cannot be met because of the small size of the lot, then the said containers shall be located in the center of the rear of the property an equal distance from the property line and any structure located thereon.
- (2) No such burning shall be done prior to 7:00 a.m., and must not be continued after 7:00 p.m. on any day. No burning shall be done in the city except on Tuesdays and Thursdays. Burning of waste material is prohibited on Monday, Wednesday, Friday, Saturday, and Sunday of each week.
- (3) No such burning shall be done unless under the supervision of a person of mature years and discretion and no burning shall be done where its maximum size is not controllable by such person.
- (4) Incineration of all waste material except yard waste shall occur in an approved container.

- (c) Recreational fires outside of one or two family dwellings in the city shall be permitted if done in accordance with the following provisions:

- (1) No recreational fire may be within twenty-five (25) feet of an existing structure or property line. Provided, however, in the case of a lot wherein the above dimensions cannot be met because of the small size of the lot, then the said pits or containers shall be located in the center of the rear of the property an equal distance from the property line and any structure located thereon.
- (2) No such burning shall be done prior to 12:00 noon, and must not be continued

after 10:00 p.m. Sunday through Thursday and after 12:00 midnight Friday and Saturday.

- (3) No recreational fires shall occur unless under the supervision of a person of mature years and discretion.
 - (4) Material that is acceptable to burn in a recreational fire shall be limited to clean clear unpainted unfinished and untreated wood and wood products excluding particle board and similar products, split firewood, tree limbs and charcoal. No accelerant such as gasoline and kerosene may be used except charcoal lighter fluid.
 - (5) A fire extinguisher or water hose shall be connected and available at all times when a recreational fire is active.
 - (6) No recreational fire shall exceed three (3) feet in diameter and two (2) feet in height.
- (d) Bonfires shall only be allowed by permit issued by the fire chief or his designee pursuant to rules promulgated by the fire chief.
- (e) Fires in an outdoor cooking apparatus are permitted in accordance with the provisions of the International Fire Code.
- (f) Any person, firm or corporation who violates this section shall be given a written warning and a \$50.00 fine for the first offense if there have been no prior incidents. If, in the judgment of the authorized city official responding to a first offense, a person has displayed gross flaunting of the law, that person shall be fined as a second offense. On the second offense the person, firm, or corporation shall be responsible for a municipal civil infraction with a fine of \$250.00, plus costs. On the third offense, or any further offense, the person, firm or corporation shall be responsible for a municipal civil infraction with a fine of \$500.00 plus costs and any applicable fee from the fire department. The building inspector, building official, code enforcement officer, all members of the fire department, and all members of the police department are hereby designated as the authorized city officials to issue municipal civil infraction citations and municipal civil infraction violation notices pursuant to this section.
- (g) The responding city official shall make an actual visual inspection of the burn site when feasible. If illegal waste materials are in the burning site, this will be considered an offense.

Sec. 13-5. Obnoxious odors; wind, sparks and embers.

- (a) It shall be a nuisance and unlawful for any person to burn or allow to be burned, at any time or place any materials of any kind which exude obnoxious odors, or when such fire emits excessive smoke, sparks or burning embers upon adjoining, adjacent, neighboring or nearby premises.
- (b) No such burning shall be done at any time or place when wind conditions will create or be apt to create a nuisance to anyone or the property of anyone in the vicinity thereof, or be a danger to the property of any person in the vicinity thereof.
- (c) Any person, firm or corporation who violates this section shall be given a written warning and a \$50.00 fine for the first offense if there have been no prior incidents. If, in the judgment of the authorized city official responding to a first offense, a person has displayed gross flaunting of the law, that person shall be fined as a second offense. On the second offense the person, firm, or corporation shall be responsible for a municipal civil infraction with a fine of \$250.00, plus costs. On the third offense, or any further offense, the person, firm or corporation shall be responsible for a municipal civil infraction with a fine of \$500.00 plus costs and any applicable fee from the fire department. The building inspector, building official, code enforcement officer, all members of the fire department, and all members of the police department are hereby designated as the authorized city officials to issue municipal civil infraction citations and municipal civil infraction violation notices pursuant to this section.
- (d) The responding city official shall make an actual visual inspection of the burn site when feasible. If illegal waste materials are in the burning site, this will be considered an offense.

Section 2. This ordinance shall become effective August 24, 2008.

Section 3. This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Simmons.

Roll Call Vote.

AYES: Councilpersons Simmons, Forster, Frederick, Simmons, and Mayor Bruff.

NAYS: Mayor Pro-Tem Owen and Councilperson Martenis.

CITIZEN COMMENTS AND QUESTIONS

Burton Fox, 216 East Oliver Street, inquired whether a warning could be issued without the fine in regard to first offenses of the newly adopted burning ordinance. He indicated he felt a warning with no fine would be the best enforcement in some cases. He also inquired whether a complainant would be advised of any action taken by police when responding to a call of an obnoxious fire.

Diane Stokes, owner of 1018 South Street, thanked Council for carefully examining the burning ordinance amendment and trying to accommodate everyone. She further commented the use of the term "obnoxious" is vague because it can be interpreted differently by each person. She also requested specific items be listed in the ordinance as being illegal to burn. It was noted the ordinance already contains such a list of prohibited items.

George Sode, 1251 North Shiawassee Street, commended Council for reaching a decision, but called into question the wisdom of the decision, indicating it did not make sense to warn someone and fine them at the same time. He also noted he felt the amended ordinance would pit neighbor against neighbor. He went on further to say he felt it was unrealistic for all citizens to know all the ordinances on the books and a warning system would be more appropriate in this case.

Shelah Hockman, 705 Campbell Drive, inquired whether a separate report listing burning citations would be developed and presented at each Council meeting. It was noted the information would be included in the regular monthly police report.

Laura Rolando, 1013 South Chipman Street, appreciated the idea of getting feedback on a complaint and indicated she felt the new ordinance amendment wouldn't change anything.

Paul Heimnick, 1415 Olmstead Street, commented on the pervasiveness of information indicating burning is harmful to one's health, the fact that over the years people have lost many rights for the benefit of the community, and his feeling Council should ban burning for the greater good.

Daniel Brayshaw, 312 Randolph Street, indicated he felt the 1225 train emits more smoke than open burning and should be regulated. It was noted Federal law dictates the level of pollutants emitted by the train.

Dorothy Meyers, 637 North Saginaw Street, inquired who would enforce the new ordinance. It was noted the police would be responsible for handing out tickets. She also indicated she felt there are many rules on the books that are not enforced.

Roberta Whittle, 1012 South Chipman Street, commented on her feeling Council tried to make the best decision they could but that it's not right to harm your neighbor. She also indicated she felt the police could be doing more productive things with their time if burning was banned and they did not have to respond to burning calls.

RECESSED AT 9:00 P.M.

RETURNED AT 9:06 P.M.

Motion by Councilperson Frederick to extend the Citizen Comments and Questions period by 15 minutes.

Motion supported by Councilperson Forster and concurred in by unanimous vote.

Deborah Cline, County Commissioner District 2 Candidate, reminded citizens to vote tomorrow and participate in the government system.

Betty Coon, 1204 Palmer Avenue, agreed with the comment on pollution caused by the train. She also read aloud a synopsis of past discussions and actions on burning. She further commented on her feeling the pool was too expensive to run and should be funded by the region not just the City.

Rick Jacob, 1300 Whitehaven Court, commented on his feeling a select few people were trying to pressure Council into making a change in the burning ordinance. He asked that Council keep everyone in mind when making a decision.

Donna Hebert, 411 Curwood Drive, invited those that did not think burning was harmful to one's health to accompany her to the hospital when she has respiratory issues.

Lorraine Weckwert, 1011 North Shiawassee Street, indicated that over the years many things have been taken away or banned for the good of the community as a whole. She asked that Council reconsider its stance on the burning ordinance and further institute a monthly curbside brush pick up.

Paul Sutphen, 309 State Street, commented on his feeling that the health hazards of burning are greatly exaggerated and people create hazards from things that are not harmful.

Robert Springsdorf, 515 Brandon Street, indicated he felt banning burning for the common good would lead to the banning of many commonly accepted items and practices.

Gerry Alcorn, County Commissioner District 2 Candidate, indicated he would like to see landlords required to provide trash service for their rental properties.

The time for Citizen Comments and Questions expires.

Councilperson Martenis reported back on the concern that a derailed train could block all emergency access to the south side of the city. He noted the trains are one mile long at most and have the capability to be split apart if necessary.

Councilperson Frederick commented on his feeling enforcement is the key to the burning issue and his hopes the City would provide an educational outreach on the subject.

Councilperson Cline responded to Ms. Meyer's concerns with rules on the books that are not enforced indicating he himself has either witnessed enforcement or participated in enforcement himself.

Mayor Bruff indicated he appreciated all the comments on the burning issue. He also indicated he felt the Council could go farther to reduce burning.

CITY MANAGER REPORT

City Manager Fivas relayed his excitement for the pending construction of the Walk of History and the nearby Riverwalk indicating bids for both projects had come in under budget. The street program will begin in the next week. The Blue Ribbon Committee has met twice with plans for two more meetings in the coming weeks. He also reminded everyone the annual city softball game would be held Friday.

CONSENT AGENDA

Motion by Councilperson Cline to approve the Consent Agenda as follows:

Bid Award – Accepted low bid from Lennox Electric for construction of the multi-use lot at 102 South Washington Street on the amount of \$189,121.57 contingent upon receipt of a letter of credit as surety for 100% of project not to expire until final payment is earned.

Replacement Request. Authorized purchase of one 150 HP pump motor for the Waste Water Treatment Plant from Lincoln Service LLC in the amount of \$9,258.00 plus freight.

Contract Payment. Authorized Progress Payment No. 1 to Novak Construction in the amount of \$40,962.59 for work completed on the 2008 Street Program.

Warrant No. 367. Accept Warrant No. 367 as follows:

Vendor	Description	Fund	Amount
Waste Management	Disposal Charges for special wastes July 1, 2008 – July 1, 2008	WWTP/Local & Major Streets	\$5,592.53
Michigan Municipal League Workers' Compensation Fund	Workers' Compensation Insurance	General	\$25,824.00

Motion supported by Councilperson Frederick.

Roll Call Vote.

AYES: Councilpersons Simmons, Frederick, Mayor Pro-Tem Owen, Councilpersons Martenis, Cline, Forster, and Mayor Bruff.

NAYS: None.

ITEMS OF BUSINESS

COUNCIL OFFICE HOURS

There was discussion regarding the availability of Council members and meeting facilities. Three Council members indicated they will take phone calls at any time thus negating the need for office hours.

It was decided to schedule group Council member office hours for the 4th Monday of the month between 6:00 p.m. and 8:00 p.m. at the Gould House. It was noted the group would consist of three members or less at any given time.

MDOT CONTRACT – ELEVATED WALKWAY AND OAKWOOD STREET BRIDGE RESTORATION

Motion by Councilperson Cline to approve the following contract with the Michigan Department of Transportation for painting and restoration of the Oakwood Street bridge and construction of an elevated path from the bridge to the existing river trail and authorize the Mayor and City Clerk to execute appropriate documents.

STP		DAB	
	Control Section		STE
	76012		
	Job Number		87291
	Project		STP
	0876(016)		
	Federal Item No.		TT 0210
	CFDANo.		20.205
	(Highway		
			Research
			Planning &
			Construction)
	Contract No.		08-5306

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF OWOSSO, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Owosso, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated June 25, 2008, attached hereto and made a part hereof:

Non-motorized pathway work along the Shiawassee River from Oakwood Avenue westerly approximately 0.2 miles; including boardwalk and bridge restoration work; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of transportation enhancement activities; and

WHEREAS, it has been determined that the PROJECT qualifies for such funding by virtue of its direct relationship with the intermodal transportation system; and

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

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

**TRANSPORTATION ENHANCEMENT ACTIVITIES
SURFACE TRANSPORTATION PROGRAM**

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

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

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

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

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

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

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

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

4. The REQUESTING PARTY, under the terms of this contract, shall:

A. At no cost to the PROJECT

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

B. Within 10 days of any ceremony to be held in connection with the PROJECT, notify the DEPARTMENT.

C. When issuing any news release or promotional material regarding the PROJECT, give the DEPARTMENT and FHWA credit for participation in the PROJECT.

D. Within 60 days of completion of the PROJECT work, prepare and submit a project report in accordance with current DEPARTMENT requirements. Said report & notification shall be submitted to:

Michael Kapp, Transportation Enhancement Administrator
Office of Economic Development and Enhancement
425 West Ottawa, P.O. Box 30050
Lansing, Michigan 48909
Phone: (517)335-1069

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

5. The PROJECT COST shall be met in part by contributions by the Federal Government. Federal Funds shall be applied to the eligible items of the PROJECT COST up to the lesser of: (1) \$699,393, or (2) an amount such that 80 percent, the normal Federal participation ratio for such funds, is not exceeded at the time of the award of the construction contract. The balance of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

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

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

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

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

7. It is understood that the REQUESTING PARTY is responsible for the facilities constructed as the PROJECT and that said facilities may require special or unusual operation and/or maintenance. The REQUESTING PARTY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly

maintain or provide for the maintenance and operation of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required.

On projects for the construction of bikeways, the REQUESTING PARTY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

On projects involving the restoration of historic facilities, the REQUESTING PARTY agrees that the project will not be awarded until the owner of such facilities has an Historic Preservation Covenant, which includes an Historic Preservation Easement, or an Historic Preservation Agreement, as appropriate, with the Michigan State Historic Preservation Office in accordance with 1995 PA 60 for the purpose of insuring that the historic property will be preserved. The REQUESTING PARTY also agrees that such facilities shall be maintained and repaired by the REQUESTING PARTY or owner, as applicable, at no cost to the DEPARTMENT or the PROJECT, in such a manner as to preserve the historical integrity of features, materials, appearance, workmanship, and environment.

On projects which include landscaping, the DEPARTMENT, at PROJECT COST, agrees to perform or cause to be performed, the watering and cultivating necessary to properly establish the plantings for a period of two growing seasons, in general conformance with Section 815.03(L) of the DEPARTMENT'S Standard Specifications for Construction. The REQUESTING PARTY shall maintain all plantings following completion of said period of establishment.

Failure of the REQUESTING PARTY to fulfill its responsibilities as outlined herein may disqualify the REQUESTING PARTY from future Federal-aid participation in Transportation Enhancement projects or in other projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

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

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

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

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

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to

recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

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

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

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

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

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

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

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

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

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

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

18. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the

respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract

EXHIBIT 1

CONTROL SECTION STE 76012
JOB NUMBER 87291
PROJECT STP 0876(016)

ESTIMATED COST

CONTRACTED WORK
Estimated Cost \$937,200

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST \$937,200
Less Federal Funds* \$699,393
BALANCE (REQUESTING PARTY'S SHARE) \$237,807

*Federal Funds for PROJECT are limited to an amount as described in Section 5.

Motion supported by Councilperson Frederick.

Roll Call Vote.

AYES: Councilpersons Simmons, Frederick, Cline, Mayor Pro-Tem Owen,
Councilpersons Forster, Martenis, and Mayor Bruff,

NAYS: None.

HOLMAN POOL DISCUSSION

City Manager Fivas detailed the two options developed by staff. One being to put a millage question on the November 2008 ballot using an estimation of necessary repairs, billing in a one year increase to cover capital improvements. The second option being to anticipate placing a millage question on the May 2009 ballot after having a comprehensive evaluation of the pool and researching possible funding options. City Manager Fivas went on to explain City staff recommends the May option and the Parks and Recreation Commission recommends the November option.

There was discussion as to whether waiting until May would effect the opening of the pool. It was anticipated it would not.

Motion by Councilperson Martenis to consider a millage question for the May 5, 2009 ballot after completing a comprehensive evaluation of the pool and researching funding options.

Motion supported by Mayor Pro-Tem Owen.

Roll Call Vote.

AYES: Councilpersons Cline, Simmons, Martenis, Mayor Pro-Tem Owen,
Councilpersons Frederick, Forster, and Mayor Bruff.

NAYS: None.

HOLMAN POOL MILLAGE

The Council took no action to place a millage question for Holman Pool on the November 2008 ballot.

COMMUNICATIONS

- Downtown Development Authority. Minutes of Meeting of July 9, 2008.
- Owosso Historical Commission. Minutes of Meeting of July 15, 2008.
- Westown Corridor Improvement Authority. Minutes of Meeting of June 11, 2008.
- Westown Corridor Improvement Authority. Minutes of Meeting of July 9, 2008.
- Parks and Recreation Commission. Minutes of Meeting of May 27, 2008.
- Parks and Recreation Commission. Minutes of Meeting of June 23, 2008.

CITIZEN COMMENTS AND QUESTIONS

Kevin M. Brown, 217 East Oliver Street, Parks and Recreation Commission Member, expressed his disappointment that Council did not place a pool millage question on the November ballot. He

also expressed his feeling the pool attendance numbers were underestimated and his intention to raise funds to open the pool if needed.

Teresa Skaryd, 601 Ryan Street, indicated she would like to see Michigan House and Senate sessions on one of the cable access channels.

Michael Ferich, 1349 West King Street, expressed his concern with the term "obnoxious" in the nuisance ordinance indicating he felt it should be changed to "toxic". He also commented on the toxic residue put out by burning.

Paul Heimnick, 1415 Olmstead Street, indicated the components of common ash are quite dangerous and build up in one's system over time.

George Sode, 1251 North Shiawassee Street, expressed his happiness at seeing people participate in local government. He also indicated he felt stored branches and brush would attract vermin and inquired about more information for the open boards and commissions seats.

Robert McNinch, 529 Corunna Avenue, hoped Council would not bow to scare tactics.

Shelah Hockman, 705 Campbell Drive, reminded everyone burning in an area with so many buildings is dangerous and that over time many rights have been taken for the greater good.

Robert Springsdorf, 515 Brandon Street, pointed out there have not been very many citations issued in relation to the number of people that burn.

Eddie Urban, 601 Glenwood Avenue, commented on his feeling it would not be effective to warn and fine people at the same time. He also indicated any veterans needing help with anything should come to the veteran's booth at the county fair.

Shelva Cebulski, 1243 Marion Street, inquired as to how many calls police have responded to in regard to burning. Public Safety Director Compeau indicated he did not know that figure without looking it up.

Burton Fox, 216 East Oliver Street, reminded people that all programming on channel 3 is provided and broadcast by volunteers (except 2 City staff members). He indicated providing such programming is a big effort. He also indicated he felt the cable company needed to improve their customer service.

Michael Tillotson, 1299 South Shiawassee Street, indicated he provides many hours of programming for broadcast on channel 3. He also indicated he was concerned with incrementalism in relation to burning rights.

Gerry Alcorn, County Commissioner District 2 Candidate, relayed that one of the lights at the newly refurbished veteran's memorial has been vandalized twice recently and asked that everyone watch over the park.

ADJOURNMENT

Motion by Councilperson Frederick for adjournment at 10:24 p.m.

Motion supported by Councilperson Simmons and concurred in by unanimous vote.

Michael E. Bruff, Mayor

Amy K. Kohagen, City Clerk