

**MINUTES OF REGULAR SESSION
GALESBURG CITY COUNCIL
SEPTEMBER 2, 2008; 7:00 P.M.
COUNCIL CHAMBERS,
GALESBURG CITY HALL
200 E. MICHIGAN AVE.
GALESBURG, MI**

GALESBURG
200 E. Michigan Avenue
Galesburg, Michigan 49053
Phone: (269) 665-7000
Fax: (269) 665-4541

I. CALL TO ORDER

PRESENT: Councilmembers Doxey, Jackson,
Kissinger, Nicolow, Yingling, Allen

ABSENT: Councilmember VanNess

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to excuse Councilmember VanNess from tonight's proceedings.

Motion approved unanimously

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Allen.

III. COMMUNITY COMMENT

Linda Carlton, President of the Downtown Development Authority reported that at their last meeting they made a wonderful announcement; they have received sufficient donations to pay for the new "Welcome to Galesburg" sign that will be placed on 35th St. at the entrance to the bridge. She thanked Arlene Banghardt, Wrifton Graham, and an anonymous contributor for making the sign possible. She said the sign will be in the City colors of Maroon and Gold and will be backlit by solar flood lights. They have sought the help of the County Road Commission for placement of the sign, which will actually be on Comstock property. Comstock Township has given authority for placement of the sign and will follow it up in writing. There was a sign at this site previously, but when it blew down in a storm they did not put it back up because they knew the bridge replacement project was coming down the pike. They also have in the works a plan to prune the small decorative trees planted by the Business Association in front of Shenanigans, Billy's Bike Shop, and the Post Office. They are investigating the cost of running electricity to the foot of these trees so that they can be lit by electric lights at Christmas time. The DDA/GBA Website is up and running as of last Friday, the address is Galesburgdda.com. They have received permission to move the sign listing active servicemen that is down at Shafter Point. The sign will be moved over to the Historical Museum and lit by floodlights with perennials planted beneath it. The DDA Fall Festival will be held on September 20th and will be

chock full of activities. They will have a dunk tank, Pony Rides, Face Painting, Wagon Rides, a Country Market, free blood pressure screening, Smoothies, kids games, a Bounce house, Music from live bands beginning at 4:00 P.M. featuring country and blue grass and a beer tent serving beer and wine from 6:00 – 12:00 P.M. There will be a \$5.00 cover charge to get into the beer tent. Area food vendors will be on hand selling their wares. She urged everyone to come out and enjoy the activities and support Galesburg Businesses.

Wrifton Graham announced that September 24, 2008 is the date of the DDA organizational meeting during which they will finalize plans to host a series of workshops to begin the formulation of a master plan for downtown redevelopment.

IV. READING AND APPROVAL OF COUNCIL MINUTES

Motion by Councilmember Kissinger, supported by Councilmember Jackson to approve the minutes of August 4, 2008 as submitted.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger,
Nicolow, Yingling, Allen

NAYS: None

V. CORRESPONDENCE

1. Notice from the Kalamazoo County Transportation Authority of a Resolution approving ballot language for the November 4, 2008 General Election Ballot which proposes the millage rate for countywide public transportation services.

RECEIVED AND PLACED ON FILE

2. Resolution from Founders Bank and Trust setting forth authorized signators for the City of Galesburg Regular Business Savings account with them.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger that the City Council identifies Mayor Gary Allen, Deputy Mayor Jim Jackson, City Clerk

Debbie Miner and City Treasurer Susan H. Weston as authorized signators for the purposes of City of Galesburg banking transactions.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

3. Letters from Kalamazoo County Health & community Services Environmental Health Office re:

- a. Declaration of the Property located at 17 Washington St. in Galesburg to be the scene of an Illegal Clandestine Methamphetamine Lab Case #08-16366.

RECEIVED AND PLACED ON FILE

- b. Authorizing Steve Simonds to be on site August 19, 2008 between the hours of 8:00 a.m. until 8:00 p.m. to remove miscellaneous items from the home at 17 Washington, Galesburg, the scene of the above described Methamphetamine Lab.

RECEIVED AND PLACED ON FILE

- c. Authorizing Steve Simonds to be on site August 22 thru August 25, 2008 between the hours of 8:00 a.m. to 8:00 p.m. for the purposes of decontamination.

RECEIVED AND PLACED ON FILE

- d. Submitting their Annual Report for 2007

RECEIVED AND PLACED ON FILE

- e. Press Release regarding Kalamazoo County Area Agency on Aging (IIIA) Senior Services program and outreach activities.

RECEIVED AND PLACED ON FILE

- f. Providing Environmental Health Response Emergency Contact Phone Numbers for Evening Calls to report public health emergencies.

RECEIVED AND PLACED ON FILE

4. Application for appointment to the Downtown Development Authority received from Fran Bell, Charleston Twp. Supervisor and Galesburg commercial property owner and tax payer.

RECEIVED AND PLACED ON FILE

5. Letter from the State of Michigan Department of Environmental Quality providing notice of the

approval of Change Order #3 on the DWRF System Improvements.

RECEIVED AND PLACED ON FILE

6. Notice from Kalamazoo County Soil Erosion and Sedimentation Control Program of Issuance of Permit #M08-111 to the Kalamazoo County Drain Office for Cleaning and Reconstruction of the Townline County Drain.

RECEIVED AND PLACED ON FILE

7. Letter from the State of Michigan Department of Environmental Quality providing notice of the issuance of NPDES Permit Certificate of Coverage #MIG610327 for Municipal Separate Storm Sewer System (MS4) Permit (MIG619000).

RECEIVED AND PLACED ON FILE

8. Notice from the State of Michigan Public Service Commission of a Hearing the Electric Customers of Consumers Energy Company to be held September 4, 2008 at 9:00 A.M. at the MPSC Office at 6545 Mercantile Way, Suite 7, Lansing MI.

RECEIVED AND PLACED ON FILE

9. Notice from the Michigan Municipal League of their Annual Meeting to be held on Mackinac Island, October 1-4, 2008 at the Grand Hotel and providing information about the procedures used by voting delegates.

RECEIVED AND PLACED ON FILE

10. Letter from the State of Michigan Public Service Commission providing notice of a hearing for the gas customers of Consumers Energy Company Case #U-15041-R to be held August 28, 2008 at 9:00 a.m. at the MPSC Office at 6545 Mercantile Way, Suite 7, Lansing MI.

RECEIVED AND PLACED ON FILE

11. Memoranda of Bid Letting from Prein & Newhof Engineers for the Battle Creek Mill & Overlay from Michigan Ave. to 35th St.

RECEIVED AND PLACED ON FILE

12. Letter from the Michigan Municipal League submitting the conference information for the national League of Cities 2008 Congress of Cities to be held in Orlando, Florida November 11-15, 2008 at the Orlando World Center Marriott.

RECEIVED AND PLACED ON FILE

13. Notice of Pending Judicial Foreclosure regarding property located at 425 E. Battle Creek St. (William & Jonica Blank).

REFERRED TO THE CITY ATTORNEY

14. Bids for renovation of the customer service window at City Hall received from:

- Howland Construction
- Michael E. Carpenter, Builder

City Clerk Miner explained that one of the three builders from whom bids were solicited has not submitted a bid for the job. Of the two bids received, low bidder was Mike Carpenter, Builder. Both of the bids require prepayment, Carpenter's bid requires 2/3 to start and Howland construction requires 1/2 to start.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to award the job of renovation to the City Hall Customer Service Window to Mike Carpenter and authorize payment of the first 2/3 contract amount.

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

VI. PUBLIC HEARINGS

Mayor Allen announced that we have arrived at the part of the agenda where the City Council accepts public comment on scheduled public hearings. The hearings that are a scheduled part of this evening's meeting will be announced by the City Clerk.

Clerk Miner said that this series of public hearings are in consideration of amendments to the Code of ordinances as follows:

1. Adoption of an Ordinance Amending Chapter 50 to establish a Park Board, its duties and procedures.
2. Adoption of an Ordinance Amending Certain Galesburg City Codes to make certain ordinance violations Municipal Civil Infractions, Establish the Galesburg Ordinance Violation Bureau, Authorize City Officials to issue Appearance Tickets; Establish Procedures for Processing of Civil Infraction Citations; Amend Ordinances Enumerated Therein from Misdemeanors to Municipal Civil Infractions.
3. Adoption of an Ordinance Amending the Code of Ordinances by Adding an Ordinance to promote and protect the health, safety and welfare of the residents and property owners of the City of Galesburg by regulating, preventing, reducing, or eliminating blight, blighting factors or causes of blight within the City; to

provide for enforcement thereof, to make violations thereof a municipal civil infraction, to repeal inconsistent ordinances.

4. Adoption of an Ordinance amending Chapter 78, Article III, Weeds; to change the maximum height of grasses and weeds to 10 inches and to change the notice period to 48 hours; to make violation a municipal civil infraction, and to repeal all ordinances or parts therein which are inconsistent or contrary, and to provide for an effective date.

This is the time for any member of the public to comment regarding the adoption of these ordinance amendments.

Wrifton Graham of the DDA said that there are a lot of reasons for the City Council to move to these types of ordinances. It will give them tools that will help them get the City into better shape.

Michael Carpenter asked about the process for adoption of ordinances. When will these ordinances be adopted? It seems to him that they have been put on the fast track. He has not even had an opportunity to review the language yet and they are scheduled to be adopted at the next City Council meeting. In the Planning Commission meetings they have been working on two ordinances for over a year. Why have those ordinances not been placed in front of the Council for adoption?

City Attorney Soltis told Mr. Carpenter that he still has an opportunity to read the ordinance language, if he has not already done, and make objections or requests as he likes. The Council has until the actual moment of adoption to make additions, deletions or corrections to the ordinances.

City Clerk Miner, responding to the comments regarding the Planning Commission ordinances, said that the Planning Commission voted not to report out either of the two ordinances they are working on, until such time as they could report them out together. There was a motion to do just that at the June Planning Commission meeting, but at Mr. Carpenter's insistence, the Planning Commission pulled back the amendment to the sign code for further review. With respect to the update to the site review amendment, that language has already been forwarded to the City Attorney for his examination.

VII. ACTION ITEMS

A. Resolutions for Action

1. Setting a Public Hearing for Monday, October 6, 2008 in consideration of the adoption of an Industrial Facilities Exemption Certificate for Smith Machine & Grinding for the purchase of new equipment (Mazak Horizontal NC Lathe, Integrex 400-4 60" Universal, Mazatrol Matrix Control plus extra equipment), estimated to cost \$395,000.00

RESOLUTION #09022008-01
CITY OF GALESBURG
County of Kalamazoo

Galesburg-Augusta Community Schools
 Kalamazoo Regional Educational Service Agency
 Kalamazoo Valley Community College

RESOLUTION SETTING PUBLIC HEARING RE:
SMITH'S MACHINE & GRINDING, INC.'S
APPLICATION FOR INDUSTRIAL FACILITIES
EXEMPTION CERTIFICATE IN CITY OF GALESBURG
INDUSTRIAL DEVELOPMENT DISTRICT NO. 3

Minutes of a regular meeting of the Galesburg City Council held on September 2, 2008, at 7:00 p.m., local time, at the City Hall.

Present: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

Absent: Councilmember VanNess

The following preamble and resolution were offered by Councilmember Kissinger and supported by Councilmember Nicolow.

WHEREAS, pursuant to Act 198 of the Public Acts of 1974, MCL 207.551 et seq, Smith's Machine & Grinding, Inc., has requested that it be granted an Industrial Facilities Exemption Certificate; and

WHEREAS, Smith's Machine & Grinding, Inc., proposes the purchase of equipment within City of Galesburg Industrial Development District No. 3:

NOW, THEREFORE, BE IT RESOLVED:

1. That the Galesburg City Council shall meet at the City Hall on Monday, October 6, 2008, at 7:00 p.m., local time, or as soon thereafter as the agenda may permit, to hear testimony of the applicant, the assessor, representatives of affected taxing units or any other interested party pertaining to the request by Smith's Machine & Grinding, Inc., for an Industrial Facilities Exemption Certificate.
2. That the City Clerk shall give notice of such hearing, in writing, to the following: Galesburg City Assessor, Kalamazoo County Board of Commissioners, Kalamazoo Regional Educational Service Agency, Galesburg-Augusta Public School District, and Smith's Machine & Grinding, Inc.
3. That the notice of hearing shall be in substantially the following form:

NOTICE OF PUBLIC HEARING

To: Smith's Machine & Grinding, Inc.
 Galesburg City Assessor Kalamazoo
 County Board of Commissioners

PLEASE TAKE NOTICE that the City of Galesburg Industrial Development District No. 3 has been created encompassing the following-described real property:

Commencing at the West ¼ post of Section 18, T. 2 S., R. 9 W., and running thence South 89°-57' East along the East and West ¼ line of said Section, 1,006.87 feet to the East line of Lot 298 of the "Assessor's Plat of the City of Galesburg"; thence South 0°-11'15" East thereon, 823.76 feet; thence South 89°-48'45" West, 227.00 feet for the place of beginning of the land hereinafter described; thence continuing South 89°-48'45" West, 270.70 feet to the West line of said Lot 298; thence South 0°-39' East thereon, 518.89 feet to the North line of Battle Creek Street, (State Highway M-96); thence Northeasterly thereon on a curve to the left with a central angle of 1°-12'07", a radius of 3,019.60 feet, chord bearing and distance of North 51°-24'-25" East, 63.34 feet, a distance of 63.34 feet; thence continuing along the North line of said Highway, North 50°-48'-20" West, 279.08 feet; thence North 0°-11'-15" West, 303.87 feet to the place of beginning. Property Identification No. 3908-18-301-209.

Smith's Machine & Grinding, Inc., has now filed an application for an Industrial Facilities Exemption Certificate pursuant to Act 198 of the Public Acts of 1974, a copy of which is on file in the office of the City Clerk.

PLEASE TAKE FURTHER NOTICE that the above-described application will be considered by the Galesburg City Council at its regular meeting of October 6, 2008, at 7:00 p.m., local time, or as soon thereafter as the agenda may permit, at the City Hall located at 200 East Michigan Avenue, Galesburg, Michigan 49053.

PLEASE TAKE FURTHER NOTICE that the Industrial Facilities Exemption Certificate requested by Smith's Machine & Grinding, Inc., is for new equipment in the estimated amount of \$395,000.00.

PLEASE TAKE FURTHER NOTICE that the City Council will consider verbal and written comments presented at the public hearing and written comments received by the City Clerk before the meeting.

PLEASE TAKE FURTHER NOTICE the City of Galesburg will provide necessary and reasonable services to individuals with disabilities at the meeting referred to herein upon one (1) week notice to the City of Galesburg. Individuals with disabilities wishing to attend the meeting who require any services to assist them in participating should contact the City of Galesburg by writing or calling the following:

Debbie Miner, Clerk
City of Galesburg
200 East Michigan Avenue
Galesburg, MI 49053

Motion by Councilmember Kissinger, supported by Councilmember Nicolow to place an affirmative roll call vote on the resolution as presented.

Motion adopted by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

ABSTAIN: None

ABSENT: Councilmember VanNess

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

I, Debbie Miner, Galesburg City Clerk, do hereby certify that the foregoing City of Galesburg Resolution was adopted by the Galesburg City Council at a regular meeting held on September 2, 2008, and that the following is a record of the vote of the members of said City Council on said Resolution:

AYES: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

ABSTENTIONS: None

ABSENT: Councilmember VanNess

Debbie Miner, City Clerk

2. Tree Removal Bid Award

DPW Supervisor Wilson said that this bid is for removal of trees at 17 Washington and trees on property located at the intersection of Hastings St. and Hamilton St., a City right-of-way north of Hamilton St. which is a dead end street that goes nowhere. The City owns 66' x 100' which comprises the street right-of-way.

David Henson, property owner at 44 Hastings St. said that the trees on the vacant street next to his home have caused problems for him for twenty years. He has complained to Rob Wilson on several occasions about this. He even took the former mayor over and showed him this property. This last July one of the trees that he has previously complained about, came down on his

property damaging his fence. He is required to have the fence, because he has a pond on his property and the fence is a safety regulation. He wrote a letter to the City requesting payment for repair of the fence and asking that the city take action to take care of the situation with the trees. It is apparent that no one read his letter, because they have not yet submitted payment for the cost of repair, or taken any action to deal with the remaining trees on this un-vacated city street.

Clerk Miner informed Mr. Henson that the resolution on tonight's agenda is for that very purpose, to award a tree removal project to one of the bidders to take down the most dangerous trees on that un-vacated property. The City obviously cannot remove all of the trees at one time, but at the August City Council meeting a motion was passed to let bids to remove the most dangerous of the trees and to continue to remove the trees on a yearly basis until they are no longer a threat. As for reimbursement for the cost of repair, the DPW Supervisor has previously informed him that the City Attorney has opined that the repair is not the responsibility of the City. The tree that came down was a live, healthy tree and this is considered an "Act of God" for which the City cannot be held responsible.

DPW Supervisor Wilson interjected, saying that he let the bids out for removal of all of the trees, not just the most dangerous trees.

Objections were voiced by audience members and City Councilmembers.

Discussion was held regarding the bid procedures for tree removal. Upon conclusion of the discussion, the following motion was made:

Motion by Councilmember Jackson, supported by Councilmember Nicolow to re-bid the project for tree removal, to specify that only the dead and most dangerous trees be removed from this property.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

3. Amendment to the Agreement for Lease of the Roelof Parking Lot

RESOLUTION #09022008-02
LEASE AGREEMENT

This LEASE AGEEMENT is made and entered into this ___ day of _____, 2008, by and between WAYNE J. ROELOF and JUDITH A. ROELOF, husband and wife, whose address is _____, and PHILIP L. ROELOF and MARY E. ROELOF, husband and wife,

whose address is _____, ("LESSORS"), and CITY OF GALESBURG (CITY), a Home Rule City, of 200 East Michigan Avenue, Galesburg, MI 49053, ("LESSEE"), on the following terms and conditions:

WITNESSETH:

1. PREMISES: The Leased PREMISES is:

CITY OF GALESBURG, COUNTY OF KALAMAZOO, STATE OF MICHIGAN:

Lot 208 and the West 40 feet of Lot 214, said lots being a part of the Assessor's Plat of the City of Galesburg, according to the Plat thereof as recorded in Liber 13 of Plats, on Page 19, Kalamazoo County Records.

LESSEE has inspected the PREMISES and accepts the PREMISES "as is".

Notwithstanding any other provision herein to the contrary, this Agreement applies only to the real property and appurtenances. Equipment is the possession of the LESSEE. Upon LESSEE'S rights to occupy the PREMISES terminating for any reason, LESSEE shall remove from the PREMISES all equipment located thereon and shall deliver up to LESSOR possession of the PREMISES in substantially the same condition as existed at the time that LESSEE first commenced occupying the PREMISES except as otherwise set forth herein.

2. LEASE TERM: This Lease shall commence September 1, 2008, and shall terminate August 31, 2018, unless sooner terminated as hereinafter set forth. After the term of this Lease, the parties may continue on a month-to-month basis with the same rights and obligations as though this Lease had continued. At that time, either party may terminate the month-to-month tenancy with or without cause upon 30 days written notice to the other party.

3. LESSEE'S RIGHT OF EARLY TERMINATION: Lessee, at its sole option, may terminate this Lease by written Notice of Intent to Terminate given no later than July 31st of each year. All real property taxes shall be prorated.

4. USE OF THE PREMISES: LESSEE may use the PREMISES for any lawful purpose including public parking.

5. RIGHT OF ACCESS FOR LESSOR: LESSOR shall have the right of ingress and egress over the premises for access to their adjacent buildings. LESSEE shall not impair or prevent access to LESSOR's adjacent buildings.

6. BASE RENT:

(a) Base Rental Amount. The rental amount shall be \$1,000.00 per year to be first paid on September 1, 2008, and on the first day of September each year thereafter, together with C.O.L.A. each year, as set forth below, beginning on September 1, 2009. In addition, Lessee shall pay all real property taxes during the term of this Lease.

(b) C.O.L.A.

(i) Reference to the Bureau of labor Statistics Cost of Living Index is to the official Consumers Price Index, for all Urban Wage Earners and Clerical workers, U.S. City Average, published by the Bureau of Labor Statistics, United States Department of Labor, CPI-U (1967+100), Revised in March, 1989.

(ii) The base monthly rental set forth in Paragraph 4 hereof shall be adjusted upward annually with the first adjustment to be one (1) year after the commencement date of this Lease, and the same day of each year thereafter during the Lease term including any extended Lease term in accordance with the following computation:

The adjustment to be made on the anniversary of the initial term of the Lease shall be made by adjusting the annual rental to reflect any percentage increase as may be shown in the Consumer's Price Index by comparing the Consumer's Price Index for the month and year in which this Lease commenced with the Consumer Price Index for the month and year of the Lease anniversary. The adjustments to be made on the same day of each year thereafter shall be made by adjusting the annual rental to reflect any percentage change as may be shown in the Consumer's Price Index by comparing the Consumer's Price Index for the year preceding the date of the last prior adjustment with the Consumer's Price Index for the year preceding the date scheduled for adjustment, as the case may be. However, the annual adjustment shall in no event exceed Five (5%) percent per annum.

(c) Change of Price Index.

If the aforementioned Index is changed so that the initial adjustment year index differs from that used as of the month of January in any succeeding years during the terms of this Lease, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) Further, LESSEE promises to perform all of the obligations of LESSEE as set forth herein. The rental provided for herein shall be an absolutely net

return to LESSOR for the Term, free from any losses, expenses or charges with respect to the PREMISES, including normal maintenance, , insurance, taxes, assessments and any other charges upon or related to the PREMISES, or with respect to any easements or rights appurtenant thereto (except as otherwise expressly set forth herein). LESSEE shall not be responsible for any capital improvements or repairs outside normal maintenance.

7. FENCING PRESENTLY ON PREMISES:

The parties agree that the fence presently on Lot 208 shall be moved at the inception of this Lease and shall be replaced at the end of the term of this Lease to its present location upon the following terms:

(a) At the inception of this Lease, the fence shall be professionally moved from Lot 208 to the West edge of Lot 215. Upon receipt of an invoice for moving the fence, not to exceed \$1,700.00, LESSEE shall, within 30 days of receipt of the invoice, reimburse LESSOR for the costs of moving the fence.

(b) At the end of the Lease term, if the LESSOR wishes to have the fence replaced into its present position, LESSEE will pay, within 30 days of the receipt of an invoice, the reasonable labor costs, only, of restoring the fence to its present location. Under no circumstances will the LESSEE pay for new fencing. LESSEE will only pay for the present fence to be moved to its present location.

8. INSURANCE AND INDEMNIFICATION:

(a) LESSEE shall, at its sole cost and expense, procure and maintain in full force and effect fire and other casualty insurance on the PREMISES with such companies and coverage and amounts as LESSOR shall reasonably approve.

(b) LESSEE shall, at its sole cost and expense, procure and maintain in full force and effect comprehensive public liability and property damage insurance for claims of personal injury, death or property damage occurring in or about or as a result of the use of the PREMISES, with single limit liability coverage of not less than One Million (\$1,000,000.00) Dollars, with policies and companies and amount and deductibles as reasonably approved by LESSOR.

(c) All insurance policies required hereunder shall (i) name LESSOR, LESSEE and any mortgages of Lessor as insureds; (ii) be payable as provided in Paragraph 11 herein, and (iii) be purchased from companies reasonably satisfactory to LESSOR.

(d) Subject to the provisions of Paragraph 11 herein, LESSEE shall indemnify and hold LESSOR and any Mortgages of LESSOR harmless from all claims, demands, actions, losses, damages and liabilities and all fees, costs and expenses (including reasonable

attorneys' fees) relating to or in any way arising from the use of the PREMISES, from any cause whatsoever.

(e) LESSEE, for itself and its respective successors and assigns (including any persons, firm or corporation which may become subrogated to any of its rights) waives any and all rights and claims for recovery against LESSOR, and its employees, agents, personal representatives, heirs and assigns, or any of them, on account of any loss or damage to any of its property insured under any valid and collectible insurance policy or policies, to the extent of any recovery collectible under any such insurance policies.

9. CONSTRUCTION LIENS: LESSEE shall keep the PREMISES free from any liens arising out of any work performed thereon, materials furnished thereto or obligations incurred by LESSEE. LESSEE shall indemnify, defend and hold LESSOR harmless against all liability, loss, damage, costs and all other expenses arising out of claims of lien for work performed or materials furnished to or for the benefit of LESSEE.

10. REPAIRS AND MAINTENANCE: LESSEE shall keep and maintain the PREMISES, and every part thereof, in good and sanitary order, condition and repair, and will deliver the same to LESSOR at the expiration of the Term in as good condition as when received, except for reasonable wear and tear thereof, and unrepaired damage as controlled by the provisions of Paragraph 11 herein.

11. ALTERATIONS AND ADDITIONS: LESSEE may not alter or add to the PREMISES without LESSOR'S prior written consent, which consent shall not be unreasonably withheld. LESSOR shall have no obligation to make any alterations or addition to the PREMISES during the Term. All right, title and interest to any alterations and additions to the PREMISES during the Term, except for trade fixtures and removable equipment, shall be the property of LESSOR and shall be deemed to be part of the PREMISES and shall remain on, and be surrendered with, the PREMISES upon termination of this Lease, without cost or expense to LESSOR.

12. RESTORATION:

(a) If the PREMISES are damaged or destroyed, in whole or in part, LESSEE shall repair, restore, replace or rebuild the PREMISES, or the part thereof so damaged, as nearly as possible to the value, condition and character of the PREMISES immediately prior to the occurrence of the damage or destruction. LESSEE shall not be entitled to an abatement of rent during the repair or reconstruction period.

(b) All insurance proceeds payable as a result of any damage to or destruction of the PREMISES shall be paid to LESSOR or any Mortgagee designated by LESSOR and shall be disbursed as reconstruction work

progresses. If the insurance proceeds are insufficient to pay for all restoration or repair work, then LESSEE shall pay any additional amounts necessary to repair or restore the PREMISES, prior to disbursement of the insurance proceeds. Upon completion of the work, and payment for all repair or restoration work, all remaining insurance proceeds shall be retained by LESSOR or any Mortgagee designated by LESSOR.

(c) Notwithstanding the foregoing provisions of this paragraph 11, if the damage to or destruction of the PREMISES cannot be repaired within 120 days of the occurrence, either LESSOR or LESSEE may terminate this Lease by giving 10 days prior written notice to the other party within 30 days after the damage or destruction occurs. If the Lease is terminated pursuant to this paragraph, all insurance proceeds payable as a result of the damage or destruction shall be retained by LESSOR or any Mortgagee designated by LESSOR.

13. CONDEMNATION: If all or any substantial part of the PREMISES is taken or condemned by a governmental authority, or shall be conveyed by LESSOR to any governmental authority under a threat of such taking or condemnation, the rights and obligations of LESSOR and LESSEE with respect to such taking or condemnation shall be as provided in this paragraph. To the extent that the award made for the taking is available to LESSOR, LESSOR, at its cost and expense, make all necessary repairs or alterations to the PREMISES so as to constitute the portion of the PREMISES not taken as a complete unit, and LESSEE shall have no obligation to make any such repairs or alterations. LESSOR shall be entitled to the entire award made for any taking, condemnation or conveyance, except that LESSEE shall not be precluded from pursuing directly against the condemning authority for its loss.

14. ASSIGNMENT AND SUBLETTING: Neither LESSOR nor LESSEE may assign this Lease or sublet all or any part of the PREMISES without the prior written consent of the other party, which consent may be withheld for any reason. LESSOR shall not transfer or convey the premises without it being subject to LESSEE's option.

15. DEFAULT: If default is made by LESSEE in the payment of rent or in the performance of any of the conditions or covenants in this Lease, and if such default continues for a period of ten (10) days after written notice is given to LESSEE by LESSOR specifying the default, then LESSOR shall have the right to reenter the PREMISES and remove LESSEE and all persons therefrom and shall have the right to terminate this Lease. If default is made by LESSEE and LESSOR exercises its option to terminate this Lease, in addition to all other remedies now or hereafter provided to LESSOR, LESSOR may proceed to re-enter the PREMISES and collect from LESSEE any deficiency between the rent payable hereunder and the rent received from any replacement tenant.

16. QUIET ENJOYMENT: LESSOR covenants that, upon LESSEE paying the rent and performing all of the terms, covenants and conditions LESSEE is to perform, LESSEE shall peaceably and quietly enjoy the PREMISES, free of any claims of paramount title or of any person claiming under or through LESSOR, and free and clear of all exceptions, reservations or encumbrances other than those set forth herein, and which LESSEE approves in writing, if any, subsequent to the date of this Lease.

17. PURCHASE OPTION: At any time during the term of this Lease, LESSOR grants to LESSEE the exclusive right to purchase the premises and any improvements thereon for the sum of \$50,000.00, cash, at closing subject to an easement to LESSOR for ingress and egress over the premises for access to LESSOR's adjacent buildings. Upon written notification of LESSEE's intent to exercise this option, closing shall take place within 30 days of written notification of the exercise of the option. The Lease payment and real property taxes for that year shall be pro-rated to the date of closing. Upon purchase, this Lease shall terminate and shall be of no further force and effect.

18. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, successors and assigns.

19. HEADINGS: The headings contained herein are for the convenience of the parties and are not to be used in construing this Lease.

20. REMEDIES CUMULATIVE: All rights and remedies of LESSOR herein are cumulative, and not exclusive, and shall be in addition to all rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy herein shall not operate as a waiver thereof, nor excuse future performance. No waiver, discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in a writing signed by the party so waiving and supported by consideration. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior or subsequent thereto.

21. APPLICABLE LAW AND INVALIDATION OF TERMS: This Lease is entered into in the State of Michigan and shall be governed by and construed in accordance with the laws of the State of Michigan. The invalidation of one or more of the terms of this Lease shall not affect the validity of the remaining terms.

22. NOTICES: All notices required herein shall be given in writing upon the parties at the addresses set forth on Page 1 hereof. Any notice shall be deemed to have been given when personally delivered or when sent by certified mail, return receipt requested and postage

prepaid. The addresses for notices may be changed from time to time by written notice to the other party.

23. AMENDMENT: This Lease represents the entire agreement between the parties. It may not be amended, altered or modified except by a writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above set forth.

LESSORS:

WITNESSES:

Wayne J. Roelof

Judith A. Roelof

Philip L. Roelof

Mary E. Roelof

LESSEE: CITY OF GALESBURG

WITNESSES:

By: Gary Allen

Its: Mayor

By: Debbie Miner

Its: Clerk

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to approve this amended contract for the lease of the Roelof Parking lot property.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Allen

NAYS: Councilmember Yingling

VIII. REPORTS OF OFFICERS & BOARDS

a. Accounts payable

Motion by Councilmember Kissinger, supported by Councilmember Jackson to approve payment of the bills as submitted by the City Clerk in the amount of \$100,714.47.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

c. Treasurer's Report

Motion by Councilmember Kissinger, supported by Councilmember Doxey to accept the Treasurer's Report.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

b. Department of Public Works

Supervisor Wilson discussed the letting of bids for reconstruction of Battle Creek Street. Last Spring when they were putting budgets together he allotted \$80,000 for this repaving project. None of the bids they received were qualifying bids, they all came in too high. The lowest came in at \$113,000. As a result he rejected all bids and has determined that they will re-let the bids again in the spring of 2009, if gasoline prices fall significantly, or, carry over the budgeted funds to next years budget and add on enough funding in the next budget cycle to get the job done. He added that the annual sewer cleanup is coming up. We are under contract with Green Earth Environmental for the provision of this service. We are endeavoring to keep very close track of our sewer system so that we can catch problems before they develop.

Mr. Wilson requested approval of an appropriation of funds in the amount of \$450.00 for a one day rental of a bulldozer to allow them to move the compost pile.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to approve the request of the DPW Supervisor for an appropriation of funds in the amount of \$450.00 for rental of a bulldozer.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

c. Police Department

Chief Mau explained that the format of the new police report is dictated by the new E-Ticket technology we are now on board with.

Councilmember Nicolow thanked the Police Department for paying particular attention to violation citations. It has made a big improvement in his neighborhood.

Motion by Councilmember Nicolow, supported by Councilmember Jackson to approve the Police Report.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

e. Minutes of City Boards & Commissions;

- Galesburg Memorial Library Minutes of June 24, and August 1, 2008
- Galesburg Historical Museum Minutes of July 16, 2008
- Galesburg DDA ByLaws and Mission Statement, including advertisement for Fall Festival, Fall Fashion Show, & Winter Wonderland

IX. NEW BUSINESS

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to amend the agenda to add a job performance review report and recommendation from the Personnel Committee regarding the hourly compensation of the City Treasurer.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

Mayor Allen reported on the recommendations of the Personnel Committee with regard to the compensation of the City Treasurer. They have recommended a \$0.45 per hour increase effective July 1, 2008.

Motion by Councilmember Jackson, supported by Councilmember Kissinger to approve the recommendations of the personnel committee with regard to the hourly rate of the City Treasurer.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

X. OLD BUSINESS

There was no old business.

XI. COUNCIL COMMENT

Motion by Councilmember Nicolow, supported by Councilmember Kissinger that a meeting of the personnel committee be called for Monday, October 6, 2008 at 6:00 P.M. and that the issue of Health Insurance benefits to City Employees be placed on the agenda for that meeting and on the agenda of the City Council Meeting directly following it.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, Yingling, Allen

NAYS: None

XII. ADJOURNMENT

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to adjourn.

Motion approved unanimously.

Meeting adjourned at 9:00 P.M.

Respectfully submitted

Debbie Miner, CMC
City Clerk, CFO