

AGREEMENT BETWEEN THE COUNTY OF MUSKEGON
AND
THE MUSKEGON COUNTY MUSEUM

TO ADVANCE THE HISTORICAL INTERESTS
OF THE COUNTY OF MUSKEGON

AGREEMENT dated January 31, 1990 between the County of Muskegon, through its Board of Commissioners ("County") and the Muskegon County Museum, a nonprofit corporation organized under the laws of the State of Michigan, through its Board of Trustees ("Museum").

ARTICLE I
FACTS

1.1 The Parties. The Muskegon County Museum is a private, not for profit corporation engaged in the acquisition, preservation, operation and restoration of certain assets, such as the Muskegon County Museum and its satellite museum facilities. The County of Muskegon is a municipal corporation which recognizes the public purpose to be achieved in fostering activities and projects which advance the historical interests of the County.

1.2 Statutory Authorization. Statutory authorization exists permitting the County Board of Commissioners to raise and appropriate money for the purpose of fostering any activities or projects which tend to advance the historical interests of the County. The County, though mindful of its authorization to establish a Historical Commission for this purpose pursuant to statute, recognizes the merit and continuing community efforts to preserve the County's historical assets through the Muskegon County Museum.

1.3 Prior Millage. The Museum previously requested that the County place on the ballot a proposition providing for the levy of three hundred twenty-five thousandths (.325) of a mill for a period not to exceed five (5) years commencing with the 1986 tax year to raise funds for the acquisition, restoration, preservation, and operation of the assets of the Museum (primarily the Muskegon County Museum and the Hackley and Hume Houses). The County responded affirmatively and the taxpayers of Muskegon County authorized and approved the levy of an additional .325 mills for the support of the Museum and its activities.

1.4 County Oversight. The County is mindful of its responsibilities to the taxpayers of the community to assure

that the ultimate use of the public monies is consistent with the spirit and intent of applicable law, the historical interests of the County and the framework of the millage approval. The Museum, mindful of its responsibilities to serve the historical interests of the County, wishes to afford the County the ability to oversee the use of the tax monies to the extent necessary and appropriate.

ARTICLE II
OBLIGATIONS OF THE MUSEUM

2.1 Financial Information. The Museum shall:

(a) Proposed Budget. Annually submit a proposed budget to the County Ways and Means Committee (or its successor) at least thirty (30) days before the date on which the County holds a hearing on the regular County budget, or in accordance with a reasonable schedule provided by the County.

(i) Notification. The county shall provide reasonable notification to the Museum of its schedule for budget preparation, review and approval.

(ii) Detail. The proposed Museum budget shall be sufficiently detailed to enable the County to determine that the public monies in the proposed budget will be used in a manner consistent with applicable law, the historical interests of the County and the framework of the millage approval.

(iii) Act 621. To the extent possible given its status as a nonprofit corporation, the Museum shall comply with the procedure of Section 15 of Act 621 of P.A. 1978, MCLA 141.435, MSA 5.3228 (35), in preparing and submitting the proposed Museum budget.

(b) Additional Information. Provide any additional information reasonably necessary for County evaluation of the proposed budget.

(c) Reporting of Revenues and of Expenditures. At least semiannually submit financial reports to the County documenting gross expenditures incurred and revenues realized since the last report and projecting anticipated revenues and expenditures for succeeding period which deviate materially from the proposed budget for the period.

(d) Major Expenditures or Purchase of Real Estate. Obtain County approval, in advance, for any expenditure in excess of \$50,000 not specifically identified and approved by the County in its review of the proposed budget or other projection of anticipated expenditures or for any expenditure for the purchase of real property.

(e) Annual Report and Audit. Provide to the County an annual financial report and audit prepared by an independent accounting firm.

2.2 Public Access. The Museum shall take all reasonable steps to insure regular and equal access by the public to the Museum facilities. The Museum may establish an admission and/or user fee in a reasonable amount which does not inappropriately limit access by the general public to the Museum facilities and may offer membership subscriptions to individuals or entities and provide certain specific offerings to members.

2.3 Museum Board of Trustees. In order to insure representation by the public, the Museum shall take steps to modify its Bylaws to allow the County to nominate one (1) non-County Board member for election or appointment to a staggered three year term on the Museum Board for each of the three (3) years beginning January, 1991 and to allow the County to act similarly with respect to their successors. If an election procedure is used, the procedure shall be structured so that a County nominee is assured election.

(a) Museum Member. Candidates for appointment or election must be members of the Museum.

(b) Museum Approval. The Museum Board may reject any candidate first submitted for appointment or election. In that case, the County may nominate a replacement who may not be rejected by the Museum.

(c) Later Modification of Bylaws. The Museum may not modify the number, composition, or terms of its Trustees without County approval prior to the effective date of the modification.

2.4 Open Meetings Act. The Museum shall conduct all meetings of its Board of Trustees in compliance with the Michigan Open Meetings Act, as amended, Public Act 267 of 1976.

2.5 Insurance. The Museum shall maintain reasonable insurance against loss or damage to property, personalty or other assets of the Museum. The parties recognize in this regard that, given the unique character of Museum assets, insurance in amounts approximating fair market or replacement value may not be available or reasonable in cost. A statement

identifying the insurance shall be provided to the County with the proposed budget and is subject to County review and approval. The Museum shall also maintain a policy of general liability insurance (including umbrella coverage) in an amount not less than \$1,000,000.00, which shall name the County as an additional insured.

2.6 Nondiscrimination. The Museum shall adhere to a nondiscrimination policy providing equal employment opportunity to all persons without regard to race, color, creed, age, national origin or sex in employee recruitment, selection, advancement and all other aspects of the employment relationship including, but not limited to, compensation, benefits, layoff, recall, transfer and termination. Physical handicap may be an employment determinate only in the case of a valid occupational requirement.

(a) Minorities and Women. The Museum acknowledges the importance of representation by minorities and women from all elements of the community throughout its personnel for all job levels and will endeavor in good faith to support the development of such employees for internal advancement.

(b) Review and Audit. The Museum shall periodically review and audit its personnel guidelines and employment activities to ensure compliance with this nondiscrimination policy.

ARTICLE III OBLIGATIONS OF THE COUNTY

3.1 Authorization of Tax Levy. The County shall annually, on or before September 15th of each year, by majority vote of the commissioners present, determine whether to authorize the levy of the millage as approved by the voters or any portion thereof for the following tax year. The parties acknowledge that the County has authorized the tax levy for the 1990 tax year.

(a) County Review. In that process, the County shall review the financial information required to be provided by the Museum and other factors it deems appropriate to determine the levy of millage and appropriation to the Museum which is consistent with the spirit and intent of applicable law, the historical interests of the County and the framework of the millage approval.

(b) Appropriation and Payment of Funds. In accordance with Section 1 of Act 254 of P.A. 1919, MCLA 46.231, MSA 5.491, the amount of levy and appropriation by the

County to the Museum is dependent on the County's determinations that the County of Muskegon's historical interests are advanced by the levy and appropriation and that the County chooses to exercise its statutory authority to advance those interests through the levy and appropriation to the Museum. The County acknowledges in this regard, however, that great weight should be given in those determinations to the authorization and approval of the levy of the millage for the support of the Museum and its activities by voters of the County of Muskegon. Amounts appropriated shall be paid to the Museum as collected.

3.2 Cooperation. The County shall endeavor to provide assistance to the Museum with regard to operation and maintenance of the Museum facilities on reasonable terms and conditions. By way of illustration, the parties shall explore the possibility of County administrative, purchasing, accounting and other support services for the Museum. These steps shall not, however create an employee/employer relationship between the County staff and the Museum. It is the sole intention of the parties that services provided by one party to the other will be performed strictly on a contractual basis.

3.3 Confidentiality. The Museum may, prior to provision of the information it is required to provide to the County, in appropriate cases, request confidentiality. In that case, the County's designated representative, upon receipt of the information and the request for confidentiality, shall: determine whether action and/or referral may be made to the County in closed session, seek other mechanisms to allow the Museum to comply with the reporting requirement without breaching the confidentiality of the information and advise the Museum before release of the information if the confidentiality of the information cannot be maintained.

3.4 Subsequent Agreements. The County agrees to modify this Agreement, at the request of the Museum, to parallel the provisions of any similar agreement between the County and any other nonprofit entity to which the County similarly appropriates millage funds.

ARTICLE IV MISCELLANEOUS

4.1 Term of Agreement. This agreement shall extend as long as public monies, through a tax millage, are authorized and appropriated for the support of Museum activities. The County, in the exercise of its oversight responsibilities, however, reserves the right to seek modifications of this Agreement upon six (6) months notice to the Museum and reserves the right to terminate the agreement upon twelve (12) months notice.

(a) Termination. If the County terminates this Agreement without cause prior to the expiration of any period of time during which there is an existing taxpayer authorization for the levy of millage for the support of the Museum, the County shall continue funding for the remainder of the millage period from available millage to the extent of providing necessary funding for any major expenditure and purchase of real property previously specifically approved by the County. This provision shall not, however, permit the Museum to accelerate payments under any multi-year commitment for expenditure which may have been entered into without the specific approval of the County.

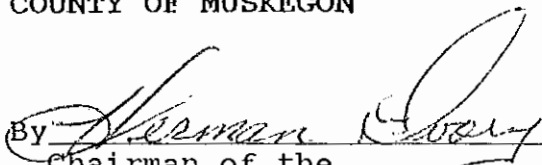
(b) Future Millage. Nothing in this Agreement limits or restricts the authority of the County to take any action it deems fit with regard to future millage propositions designed to support either the Museum or other public interest activities.

4.2 Default. In the event of a failure to comply with any of the terms and conditions of this Agreement, the defaulting party shall be given notice and an opportunity to cure the default within ninety (90) days of notification. Neither party shall be estopped from asserting a default due to a failure to provide notice of a prior default.

4.3 Execution and Modification. This Agreement may not be modified or amended except through execution of an instrument signed and approved by the Museum and the County.

4.4 Severability and Legality. Any provision of this Agreement which is in violation of law shall be severed from the remainder of the Agreement (which shall remain valid) and shall be void and of no effect.

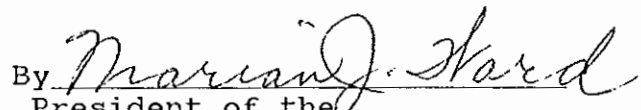
COUNTY OF MUSKEGON

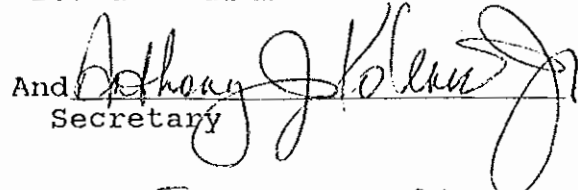
By 
Chairman of the
Board of Commissioners

And 
County Clerk

Dated: Feb. 14, 1990

MUSKEGON COUNTY MUSEUM

By 
President of the
Board of Trustees

And 
Secretary

Dated: February 26, 1990

AJK-55/5556/AJK/cst/021290