

CITY OF MENOMINEE, MICHIGAN  
MENOMINEE CITY COUNCIL  
AGENDA FOR JULY 20, 2009  
HELD AT CITY HALL - 2511 10<sup>th</sup> STREET – 5 p.m.

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A) CALL TO ORDER.

B) PLEDGE OF ALLEGIANCE TO THE FLAG.

C) ROLL CALL.

D) APPROVAL OF THE AGENDA.

E) MINUTES OF PREVIOUS MEETINGS:

- 1) Regular meeting of June 15, 2009.
- 2) Special meeting of June 29, 2009.
- 3) Special meeting of June 30, 2009.

F) PUBLIC HEARING(S):

G) PUBLIC COMMENT:

- (1) Maximum 15-minute public comment session. Statements, not debate, limited to three minutes per person on agenda items only.

H) COMMUNICATIONS:

I) REPORTS OF OFFICERS:

- 1) City Manager's report.

J) REPORTS OF STANDING COMMITTEES:

- 1) The Finance Committee on the June bills.
- 2) The Judicial and Legislative Committee on a "Public Right-of-Way Encroachment License" for the M&M Plaza sign.
- 3) The Public Safety/Public Works Committee on street lighting on US-41 North from 20<sup>th</sup> Avenue.
- 4) The Public Safety/Public Works Committee on purchasing a sanitation collection vehicle.

K) MOTIONS AND RESOLUTIONS:

L) PUBLIC COMMENT.

M) COUNCIL COMMENTS.

N) ADJOURN.





PUBLIC RIGHT-OF-WAY ENCROACHMENT LICENSE

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 2009, between the CITY OF MENOMINEE, a Michigan municipal corporation, whose address is 2511 Tenth Street, Menominee, Michigan, 49858, (referred to as the "CITY"), and M&M Plaza Enterprises LCC, a Michigan Limited Liability Company, whose address is 1301 Eighth Avenue, Menominee, Michigan, (referred to as the "OWNER").

**RECITALS:**

WHEREAS, OWNER owns certain real property located within the corporate limits of the City of Menominee, Menominee County, and State of Michigan, known as the M&M Plaza, with its office located at 1301 Eighth Avenue.

WHEREAS, OWNER desires to continue to use, maintain and improve its existing off-premise pylon sign, "SIGN", within the westerly street right-of-way of 13<sup>th</sup> Street south of 10<sup>th</sup> Avenue, right-of-way owned and maintained by the CITY; and

WHEREAS, the SIGN will be subject to applicable provisions of Menominee City Ordinances and all other applicable government regulations to the extent permitted under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants expressed here, and other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. **License and Encroachment.** The CITY grants to OWNER a license, for a defined term, for the encroachment of the SIGN into the public right-of-way, strictly limited to its present location, as described and shown in the U.P. Engineer & Architects, Inc. drawing dated \_\_\_\_\_, submitted to the City of Menominee, and made a part of this Agreement by reference. The design and configuration of the SIGN shall be as described and shown in Orde Sign & Graphics, Inc. design # 10102-05 dated October 17, 2008, submitted to the City of Menominee, and also made a part of this Agreement by reference.

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This grant of a license by the CITY constitutes permission to use the property only, and is not intended by the CITY to convey an easement or fee interest in the property to OWNER.

3. **Release.** OWNER hereby releases the CITY, its representatives, employees, appointed and elected officials from any and all damages, claims, or liability, with respect to the SIGN, that may arise due to the CITY'S operation and maintenance of its right-of-way, except to the extent caused by the willful misconduct or negligence of the CITY or its employees, agents or contractors.

4. **Priority of CITY'S Right-of-Way.** The SIGN shall not be used, maintained, or improved in such a manner so as to interfere, in any way, with the CITY'S operation or maintenance of its right-of-way.

5. **OWNERS' Responsibilities.** OWNER shall at all times maintain the OWNER'S SIGN in good condition and repair (including without limitation repainting of any painted surfaces and removal of graffiti, if applicable), and OWNER shall maintain the immediate area in a neat, tidy, and clean condition, free of any refuse or debris.

6. **Indemnification and Insurance.** The OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, losses and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any tort, intentional action, negligent act or omission of the OWNER, its guests, agents, subcontractors, or anyone for whose act or acts any of them may be liable, for acts or omissions occurring in that portion of the public right-of-way on, under or through which the SIGN is situated or resulting from the use or maintenance of the SIGN; provided, however, OWNER's obligations under this Section 6 shall not apply to claims, damages, losses or expenses resulting from the willful misconduct or negligence of the CITY or its employees, agents or contractors.

*The OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees, and elected and appointed officials, from and against all claims, damages, losses and expenses of any sort, including reasonable attorneys' fees and costs, including appeals, arising out of or resulting from any order, judgment, or other directive issued by any county, state, or federal government or agency, having jurisdiction over the SIGN, or the public right-of-way in which the SIGN is located, which would require the SIGN to be removed or relocated within or outside of the boundaries of the public right-of-way.*

In addition, OWNER shall maintain at all times, *throughout the Term*, bodily injury and property damage liability insurance coverage for the SIGN, with a combined single limit of One Million Dollars (\$1,000,000.00) with respect to bodily injury and with respect to property damage. The CITY shall be named as an additional insured under the policy. OWNER shall provide CITY with proof of its compliance with this insurance requirement annually.

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**7. Controlling Laws.**

a. This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Michigan, and all duly adopted ordinances, regulations, and policies of the CITY now in effect and those hereinafter adopted.

b. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Menominee County, Michigan.

c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

**8. Miscellaneous.**

a. This document constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes any and all previous discussions, understandings, and agreements. The parties shall make any amendments to or waivers of this Agreement only in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party.

b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason, including a change of law, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

**9. Legal Counsel.** OWNER acknowledges that it has had an opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and OWNER represents and warrants that it has sought such independent legal advice and counsel or has knowingly and voluntarily waived such right.

**10. Attorney's Fees.** OWNER agrees that it shall be liable for reasonable attorney's fees incurred by the CITY, if the CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.

11. **Negotiation.** The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arms length and that this Agreement was prepared and executed without undue influence exerted by any party or on any party.

12. **Termination of License and Removal of Encroachment.** The License granted by this Agreement shall be for a term of approximately forty (40) years and shall be effective from the date this Agreement is fully executed until midnight on May 31, 2049 (the "Term").

Upon the expiration of the Term, OWNER shall remove the SIGN from the CITY'S right-of-way, in a manner satisfactory to the CITY, within thirty days of the date of such expiration, unless the Term is extended by written prior agreement of the CITY and OWNER. If the OWNER fails to remove the SIGN within the above-described timeframe, or if the OWNER does so in a manner that is not satisfactory to the CITY, the CITY may remove it and charge the cost of removal and remediation to the OWNER. Should the OWNER fail to pay the costs of CITY'S removal of the SIGN within thirty days of the CITY'S request, the CITY may file a lien against the real property owned by the OWNER to accrue interest at the statutory rate.

13. **Effective Date.** The effective date of this Agreement is the date of its execution by the last person to execute it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

CITY OF MENOMINEE

Eric A. Strahl, City Manager

Attest:

Thomas F. DeNike, City Clerk

STATE OF MICHIGAN     )  
  )ss  
COUNTY OF MENOMINEE)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Eric A. Strahl, and Thomas F. DeNike., to me known as the City Manager and City Clerk respectively, of the City of Menominee, who acknowledged before me that they have

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Deleted: the date the Agreement is terminated by either party or revoked by the CITY. Either Party shall have the right to terminate the Agreement and License, with or without cause, by delivery of written notice to the other Party. Prior to any termination by OWNER becoming effective, OWNER shall remove the SIGN from the CITY'S right-of-way, in a manner satisfactory to the CITY, within thirty (30) days of the date of OWNER's receipt of the written notice.  
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Deleted: The CITY retains the right to revoke the License at any time, with or without cause, by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement.  
Cindy Wink 6/17/09 11:00 AM  
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executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

\_\_\_\_\_  
Susan K. Johnson, Notary Public  
Menominee County, Michigan  
My Commission Expires: 1-12-2014  
Acting in the County of Menominee

**OWNER:**  
**M&M PLAZA ENTERPRISES, LLC**

\_\_\_\_\_  
By: Keith Killen  
Title: *Member*

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STATE OF )  
 )ss  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Keith Killen, who acknowledged to me that he executed the foregoing agreement for the purposes expressed within it, and that he was authorized to do so on behalf of the OWNER.

\_\_\_\_\_  
Notary Public  
County,  
My Commission Expires:  
Acting in the County of

Drafted by:  
Robert J. Jamo, City Attorney  
City of Menominee  
2511 Tenth Street  
Menominee, MI 49858  
(906) 863-0102

Public Notary License (Renewed 6-16-09)

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