

# MARSHALL CITY COUNCIL AGENDA

TUESDAY – 7:00 P.M.

December 3, 2013



- 1) CALL TO ORDER
- 2) ROLL CALL
- 3) INVOCATION- David Good, First Baptist Church
- 4) PLEDGE OF ALLEGIANCE
- 5) APPROVAL OF AGENDA – Items can be added or deleted from the Agenda by Council action.
- 6) PUBLIC COMMENT ON AGENDA ITEMS – Persons addressing Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any agenda item.
- 7) CONSENT AGENDA
  - A. 2014 City Council Meetings P. 3  
City Council will receive dates of the 2014 City Council Meetings.
  - B. 2014 Boards and Commissions P. 5  
City Council will receive the listing of the Board and Commission positions that are scheduled to expire and the term of office.
  - C. City Council Minutes P. 7  
Work Session..... Monday, November 18, 2013  
Regular Session..... Monday, November 18, 2013
  - D. City Bills P. 11  
Regular Purchases ..... \$ 221,672.06  
Weekly Purchases –11/15/13..... \$ 42,896.11  
Weekly Purchases –11/22/13..... \$ 154,752.28  
Total..... \$ 419,320.45
- 8) PRESENTATIONS AND RECOGNITIONS
  - A. Certificates of Appreciation  
City Council will present Certificates of Appreciation to past Boards and Commissions members.
  - B. North Country Trail Association  
Eric Longman and Andrea Ketchmark will present their Association goals of Marshall being a Trail City.
  - C. Audit Presentation Audited Financial Statements for the Fiscal Year Ended June 30, 2013  
Mark Kettner of Rehmann Robson will give a presentation on the Fiscal Year 2013 Audit for the City of Marshall.
- 9) INFORMATIONAL ITEMS
- 10) PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION
  - A. Repeal Ordinance §130.01: Begging P. 15  
City Council will hear public comment on the repealing Chapter 130: General Provisions, Section 130.01: Begging.

**Mayor:**

James Dyer

**Council Members:**

Ward 1 - David Revore

Ward 2 - Nick Metzger

Ward 3 - Brent Williams

Ward 4 - Jack Reed

Ward 5 - Jody Mankerian

At-Large - Kathy Miller



- B. **Chapter 91: Parks and Recreation** P. 18  
City Council will hear public comment on the proposed amendment to Chapter 91: Parks and Recreation, Section 91.05.
- C. **Proposed Amendment to §156.122 and Addition of §156.205** P. 21  
City Council will hear public comment on the proposed amendment to §156.122 and the addition §156.205 to General Standards and Exceptions, Use Standards: Laboratories.
- D. **Proposed Additions to §156.003 Definitions and §156.221 Accessory Structures and Uses regarding Donation Collection Bins** P. 25  
City Council will hear public comment on the on the proposed changes to §156.003 Definitions and §156.221 Accessory Structures and Uses regarding Donation Collection Bins.
- E. **Water and Sewer Rate Ordinance Amendment** P. 29  
City Council will hear public comment on the proposed amendment to Chapter 53: Rates of the Marshall Code of Ordinances.

**11) OLD BUSINESS**

- A. **Proposed Addition of Revised Language to §50.02 Garbage and Rubbish: Use of Containers on Private Property** P. 35  
City Council will consider the recommendation to adopt the revised addition of language to §50.02 Garbage and Rubbish: Use of Containers on Private Property.

**12) REPORTS AND RECOMMENDATIONS**

- A. **Marshall House / Consumers Energy – Restrictive Covenant** P. 37  
City Council will consider the recommendation to approve the signing of the Restrictive Covenant for the Marshall House Property.
- B. **Battle Creek Unlimited Services Agreement** P. 53  
City Council will consider the recommendation to approve the Services Agreement with Battle Creek Unlimited & MAEDA and authorize the Clerk to sign the agreement.

**13) APPOINTMENTS / ELECTIONS**

- A. **Downtown Development Authority – Main Street Board Reappointments** P. 61  
City Council will consider the recommendation to reappoint Barb Keith and Mark Stuart to the DDA/Main Street Board with terms expiring December 31, 2017.

**14) PUBLIC COMMENT ON NON-AGENDA ITEMS**

Persons addressing Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any item not on the agenda.

**15) COUNCIL AND MANAGER COMMUNICATIONS**

**16) ADJOURNMENT**

Respectfully submitted,

Tom Tarkiewicz  
City Manager



**ADMINISTRATIVE REPORT**  
**December 3, 2013 – CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council

**FROM:** Trisha Nelson, Clerk  
Tom Tarkiewicz, City Manager

**SUBJECT:** 2014 City Council Meetings

**BACKGROUND:** According to Marshall City Charter Section 2.15 (a), Council shall meet regularly at least once in every month. As such, the Council has customarily held its meetings on the first and third Monday of the month, unless a holiday falls on a Monday.

Attached is a listing of meeting dates for City Council in the Year 2014. All meetings will be held at 7:00 p.m. in the Council Chambers of Town Hall.

**RECOMMENDATION:** None. This is an informational report.

**FISCAL EFFECT:** None.

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

*Trisha Nelson*

Trisha Nelson  
Clerk

*Tom Tarkiewicz*

Tom Tarkiewicz  
City Manager

323 W. Michigan Ave.

Marshall, MI 49068

p 269.781.5183

f 269.781.3835

cityofmarshall.com



**CITY OF MARSHALL**

**PUBLIC NOTICE**

**THE MARSHALL CITY COUNCIL MAY HOLD WORK SESSIONS PRIOR TO COUNCIL MEETINGS AT 6:00 P.M., AT TOWN HALL IN THE COUNCIL CHAMBERS, 323 WEST MICHIGAN AVENUE, MARSHALL, MI 49068.**

**THE MARSHALL CITY COUNCIL WILL HOLD ITS REGULAR MEETINGS IN THE YEAR 2014 AT 7:00 P.M., AT TOWN HALL IN THE COUNCIL CHAMBERS, 323 WEST MICHIGAN AVENUE, MARSHALL, MI 49068, ON THE FOLLOWING DATES:**

Monday, January 6 <sup>th</sup>	<i>Tuesday, January 21<sup>st</sup></i>
Monday, February 3 <sup>rd</sup>	<i>Tuesday, February 18<sup>th</sup></i>
Monday, March 3 <sup>rd</sup>	Monday, March 17 <sup>th</sup>
Monday, April 7 <sup>th</sup>	Monday, April 21 <sup>st</sup>
Monday, May 5 <sup>th</sup>	Monday, May 19 <sup>th</sup>
Monday, June 2 <sup>nd</sup>	Monday, June 16 <sup>th</sup>
Monday, July 7 <sup>th</sup>	Monday, July 21 <sup>st</sup>
Monday, August 4 <sup>th</sup>	Monday, August 18 <sup>th</sup>
<i>Tuesday, September 2<sup>nd</sup></i>	Monday, September 15 <sup>th</sup>
Monday, October 6 <sup>th</sup>	Monday, October 20 <sup>th</sup>
Monday, November 3 <sup>rd</sup>	Monday, November 17 <sup>th</sup>
<i>Tuesday, December 2<sup>nd</sup></i>	Monday, December 15 <sup>th</sup>

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Trisha Nelson, Clerk



**ADMINISTRATIVE REPORT**  
**December 3, 2013 – CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council

**FROM:** Trisha Nelson, Clerk  
Tom Tarkiewicz, City Manager

**SUBJECT:** Appointment or Reappointment of Boards and  
Commission Members

**BACKGROUND:** According to Marshall City Charter Section 2.13(d) Council shall, in December of each year, publish a listing of all board or commission positions which are scheduled to expire the following year and the term of office for each. Such notice shall also state how applicants may apply for such vacancies. The notice shall be published in a newspaper of general circulation within the city. Said notice shall also be posted in City Hall.

Attached is a listing of vacancies which will be published in the Advisor Chronicle.

**RECOMMENDATION:** None. This is an informational report

**FISCAL EFFECT:** None.

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

Trisha Nelson  
Clerk

Tom Tarkiewicz  
City Manager

323 W. Michigan Ave.

Marshall, MI 49068

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**CITY OF MARSHALL NOTICE**  
**Boards and Commissions Positions**

Section 2.13: Appointment of Boards and Commissions, of the City Charter, requires publication, in December, a listing of all Board and Commission positions which are scheduled to expire the following year and the term of office.

Following is a listing of Boards and Commissions positions whose terms are scheduled to expire in 2014. Interested parties wishing to volunteer their services may apply by filling out an application and submitting a resume to the Mayor, Marshall City Hall, 323 West Michigan Avenue, Marshall, MI 49068. Some expired seats may be filled by the incumbent member.

<b>Board or Commission</b>	<b>Term of Office</b>
AIRPORT BOARD Two positions	10/1/2014 to 9/30/2017
BOARD OF REVIEW Four positions	1/1/2014 to 12/31/2015
BROOKS NATURE AREA Two positions	8/15/2014 to 8/14/2017
DISTRICT LIBRARY BOARD One position	3/31/2014 to 3/30/2017
DOWNTOWN DEVELOPMENT AUTHORITY Three positions	12/31/2014 to 12/30/2018
LOCAL ADVISORY COMMITTEE One position	2/1/2014 to 1/31/2017
LOCAL DEVELOPMENT FINANCE AUTHORITY One position	6/2/2014 to 6/1/2018
PARKS AND RECREATION Two positions	7/01/2014 to 6/30/2017
PLANNING COMMISSION Four positions	11/01/2014 to 10/31/2017
ZONING BOARD OF APPEALS Two positions	3/10/2014 to 3/09/2017

Trisha Nelson, Clerk

IN A WORK SESSION Monday, November 18, 2013 at 6:00 P.M. in the Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order.

Present: Council Members: Mayor Dyer, Mankerian, Metzger, Miller, Reed, and Williams

Also Present: City Manager Tarkiewicz and Clerk Nelson

Absent: Council Member Revore

A. Carl Fedders presented the design concepts for the proposed Shearman Park and the also the 2013 Road Report.

B. James Schwartz presented a couple of design options for the Marshall Regional Law Enforcement Center.

The meeting was adjourned at 6:48 p.m.

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James L. Dyer, Mayor

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Trisha Nelson, Clerk

**CALL TO ORDER**

IN REGULAR SESSION Monday, November 18, 2013 at 7:00 P.M. in the Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order by Mayor Dyer.

**ROLL CALL**

Roll was called:

Present: Council Members: Mayor Dyer, Mankerian, Metzger, Miller, Reed, Revore, and Williams.

Also Present: City Manager Tarkiewicz and Clerk Nelson.

Absent: None

**INVOCATION/PLEDGE OF ALLEGIANCE**

Kris Tarkiewicz of Family Bible Church gave the Invocation and Mayor Dyer led the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

**Moved** Metzger, supported Reed to add item 9A-Storm Damage Update and the Michigan South Central Power Agency invoice in the amount of \$764,466.79. On a voice vote – **MOTION CARRIED.**

**PUBLIC COMMENT ON AGENDA ITEMS**

None.

**CONSENT AGENDA**

**Moved** Williams, supported Metzger, to approve the Consent Agenda:

- A. Schedule a public hearing for Tuesday, December 3, 2013 to hear public comment on the proposed amendment to Chapter 53: Rates of the Marshall Code of Ordinances;
- B. Schedule a public hearing for Tuesday, December 3, 2013 to hear public comment on the proposed amendment to Chapter 91: Parks and Recreation, Section 91.05;
- C. Schedule a public hearing for Tuesday, December 3, 2013 to hear public comment on repealing Chapter 130: General Provisions, Section 130.01: Begging;
- D. Approve minutes of the City Council Work Session and Regular Session held on Monday, November 4, 2013;
- E. Approve city bills in the amount of \$ 1,020,871.03.

On a roll call vote – ayes: Mankerian, Metzger, Miller, Reed, Revore, Williams,

and Mayor Dyer; nays: none. **MOTION CARRIED.**

**PRESENTATIONS AND RECOGNITIONS**

None.

**INFORMATIONAL ITEMS**

**A. Storm Damage Update:**

Carl Fedders, Director of Public Services, gave Council an update on the storm damage and power outages that took place on November 17, 2013.

**PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

None.

**OLD BUSINESS**

None.

**REPORTS AND RECOMMENDATIONS**

**A. Approval of City Hall Renovation Bid, Acquisition of East Michigan Avenue Fire Station Site, Additional Architectural Fees for Fire Station, and Retainage of Construction Manager for Fire Station:**

**Moved** Williams, supported Miller, to approve the recommendation to accept the bid from Beckering Construction of Grand Rapids in the amount of \$320,690 for the City Hall Renovations project; approve the purchase of a parcel from Golden Rule LLC on East Michigan Avenue for the Fire Station in the amount of \$25,000; approve additional architectural fees for C2AE for a total contract amount of \$400,621 for City Hall Renovations, public restrooms, and the East Michigan Avenue Fire Station projects; and approve the amendment to the Clark Construction Company construction management contract for an additional \$149,293 to provide for the Fire Station. On a roll call vote – ayes: Metzger, Miller, Reed, Revore, Williams, Mayor Dyer, and Mankerian; nays: none. **MOTION CARRIED.**

**B. Income Tax Study Proposal:**

**Moved** Miller, supported Reed, to approve the proposal with Municipal Analytics for a City Income Tax Feasibility Study in an amount not to exceed \$18,775. On a roll call vote – ayes: Revore, Williams, Mayor Dyer, Mankerian, Metzger, Miller, and Reed; nays: none. **MOTION CARRIED.**

**C. First Quarter Investment Portfolio Report:**

**Moved** Williams, supported Metzger, to accept the 1<sup>st</sup> Quarter Investment Portfolio Report as presented. On a voice vote – **MOTION CARRIED.**

**D. First Quarter Financial Report:**

**Moved Metzger, supported Mankerian, to accept the 1<sup>st</sup> Quarter Financial Report as presented. On a voice vote – MOTION CARRIED.**

**APPOINTMENTS / ELECTIONS**

None.

**PUBLIC COMMENT ON NON-AGENDA ITEMS**

None.

**COUNCIL AND MANAGER COMMUNICATIONS**

**ADJOURNMENT**

The meeting was adjourned at 7:57 p.m.

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James L. Dyer, Mayor

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Trisha Nelson, City Clerk

User: ctanner  
DB: Marshall

EXP CHECK RUN DATES 12/05/2013 - 12/05/2013

UNJOURNALIZED

OPEN

INVOICE NUMBER	VENDOR NAME	DESCRIPTION	AMOUNT
27941	ABLE HEATING & COOLIN	SERVICE APT #108	183.00
5798	AHTCS LLC	TENANT FILE MANAGEMENT	150.00
AA-68313	AIM ASPHALT, INC	MILL & PAVE	3,725.00
9914210965	AIRGAS USA LLC	CYLINDER RENTAL	69.36
1171013-6	ALLIANCE ARCHITECTS	2013 APARTMENT MODERNIZATION	1,115.00
13244	ALLSTATE ELECTRIC INC	PHOTO EYE REPLCMNT	616.00
12-653522	ARROW UNIFORM	CUST #010198-02	56.09
12-653518	ARROW UNIFORM	CUST #010198-01	26.37
12-653525	ARROW UNIFORM	CUST #010198-05	20.00
12-653523	ARROW UNIFORM	CUST #010198-04	62.30
12-653524	ARROW UNIFORM	CUST #010198-03	230.97
12-661173	ARROW UNIFORM	CUST #010198-05	20.00
12-661171	ARROW UNIFORM	CUST #010198-04	62.30
12-661166	ARROW UNIFORM	CUST #010198-01	26.37
12-661172	ARROW UNIFORM	CUST #010198-03	153.20
12-661170	ARROW UNIFORM	CUST #010198-02	56.09
848331	AUSTIN HARDWARE & SUP	GAS SPRING	80.84
388-161339	AUSTIN-BATTERIES PLUS	BATTERIES	24.96
225-336933	AUTO VALUE MARSHALL	JB WELD SKINCARD	4.79
225-336759	AUTO VALUE MARSHALL	BLACK & WHITE GLOSS	16.76
225-336543	AUTO VALUE MARSHALL	ADPT	3.39
225-336945	AUTO VALUE MARSHALL	GLOSS BLACK & WHITE, FOREST GREEN	20.66
225-336136	AUTO VALUE MARSHALL	MIRROR	82.62
225-336018	AUTO VALUE MARSHALL	ELEC FLASHER	9.29
225-335758	AUTO VALUE MARSHALL	COMPLETE PREVAL, JET BLACK	59.97
225-337360	AUTO VALUE MARSHALL	J-B KWIK CARDED	6.19
225-336890	AUTO VALUE MARSHALL	FILTERS, BRAKLEEN, HALOGEN CAPSULES	169.30
225-336734	AUTO VALUE MARSHALL	3/8-30 POLY ARM	5.26
225-335187	AUTO VALUE MARSHALL	COOLANT	4.19
225-333874	AUTO VALUE MARSHALL	PRESSURE TESTER	96.49
93587	B S & A SOFTWARE	ANNUAL SERVICE/SUPPORT	4,055.00
111513	BAKER TOOL RENTAL & S	MINI RENTAL	175.00
102773	BUD'S WRECKER SERVICE	UNIT 55, FORD E 350	55.00
1188	CALHOUN CO. F.O.P.	AD	100.00
111213	CARL COMMUNICATIONS	VERIFIED/TRACED 7 PHONE NUMBERS	225.00
2567	CB HALL ELECTRIC COMP	STREET DEPT SHARE OF HAND DRYERS & ICE	484.30
111413	COLLINS PROFESSIONAL	GRIND OUT STUMPS & PUT DOWN TOP SOIL	4,560.00
9002	CROSSTOWN COMMUNICATI	BUS ADVERTISING FOR ENERGY OPTIMIZATION	250.00
112013COM	CRT, INC	EXCHANGE SERVER - T-BRICKS	6,600.00
112013COMA	CRT, INC	T - BRICK HOURS	4,400.00
117780	D & D MAINTENANCE SUP	JANITORIAL SUPPLIES	100.25
69599	DADOW POWER EQUIPMENT	FUEL SENDER, SEAT	184.83
438835	DARLING ACE HARDWARE	2 CYCLE OIL CASE	179.98
439013	DARLING ACE HARDWARE	BIT INSERTS, BIT HOLDER, BIT SCREWDRIVE	15.96
438454	DARLING ACE HARDWARE	CONN WIRE, GRND CORD	12.97
438598	DARLING ACE HARDWARE	STIHL MOTOMIX	47.94
438654	DARLING ACE HARDWARE	LATCH	12.99
438259	DARLING ACE HARDWARE	KNIFE SNAPBLADE	1.98
438347	DARLING ACE HARDWARE	NUTS & BOLTS	9.52
438450	DARLING ACE HARDWARE	PIPE INSULATION	2.49
438422	DARLING ACE HARDWARE	DOOR STOP, KICKDOWN DOOR HOLD	8.98
438390	DARLING ACE HARDWARE	PIPE FITTING-QC ADAPTER	3.99
437402	DARLING ACE HARDWARE	CABLE TIES	8.99
438226	DARLING ACE HARDWARE	FLOOR WAX, NUTS & BOLTS	9.99
437403	DARLING ACE HARDWARE	BATTERIES	15.98
W18696830102	DISCOUNT SCHOOL SUPPL	LIL ARTIST SUPPLIES	114.64
12761,62,63,64	EMERGENCY VEHICLE SER	ANNUAL VEHICLE MAINTENANCE 51/31/41/32	7,014.43
10729	ERIC DALE HEATING & A	DIAGNOSTIC ANALYSIS - BOILER REPAIR	94.00
MIMA149519	FASTENAL COMPANY	BATTERIES	74.96
MIMA146969	FASTENAL COMPANY	NUTS & BOLTS	1.77
MIMA149334	FASTENAL COMPANY	HCS 3/8-16 X 6	12.00
MIMA149437	FASTENAL COMPANY	CABLE TIES	2.73
MIMA149460	FASTENAL COMPANY	PAPER TOWELS	142.66
MIMA147784	FASTENAL COMPANY	RETHREADING DIE	48.36
962942	FIRST ADVANTAGE LNS O	PRE-EMPLOYMENT TEST - S. EMERSON	46.00
102813 ATHLETIC	FIVE STAR UNDERGROUND	WINTERIZING SPRINKLERS ATHLETIC FIELD	70.00
2515	FUG	FALL SOFTBALL T-SHIRTS	322.40
142001-2014	GOVERNMENT FINANCE OF	KENNETH SWISHER FINANCE DIRECTOR	170.00
70477	HERMANS MARSHALL HARD	LOCKSET LATCH	9.99
70478	HERMANS MARSHALL HARD	KMD KUTTER	18.99
70388	HERMANS MARSHALL HARD	SPRAY BOTTLE	2.49
70446	HERMANS MARSHALL HARD	VALVE	7.99
70429	HERMANS MARSHALL HARD	WING NUT, ZIP TIES	14.98
70456	HERMANS MARSHALL HARD	3-WAY SWITCH	4.58
70452	HERMANS MARSHALL HARD	CHIME	39.99
70459	HERMANS MARSHALL HARD	SWITCH, BULBS, CARPET BAR	12.57
393309	HUB INTERNATIONAL MID	EXCESS CRIME RENEWAL	781.00
393310	HUB INTERNATIONAL MID	BOILER & MACHINERY LARGE	30,806.00
393308	HUB INTERNATIONAL MID	AIRPORT LIABILITY RENEWAL	3,500.00

User: ctanner

EXP CHECK RUN DATES 12/05/2013 - 12/05/2013

DB: Marshall

UNJOURNALIZED

OPEN

INVOICE NUMBER	VENDOR NAME	DESCRIPTION	AMOUNT
393311	HUB INTERNATIONAL MID	PCK/D&O/EPLI/FID LIAB/CR QTRLY	47,872.00
138192	INDUSTRIAL CHEM LABS	ODOR CONTROL	296.46
22315953	INGERSOLL-RAND AIR CE	AIR COMPRESSOR	19,019.00
1901801007082	INTERSTATE ALL BATTER	BATTERIES	556.79
86292	J & K PLUMBING SUPPLY	TUB STOP, FLAPPER	11.43
86299	J & K PLUMBING SUPPLY	TOILET	313.30
86157	J & K PLUMBING SUPPLY	PIPE & FITTINGS	9.98
86224	J & K PLUMBING SUPPLY	THER-CEL WALL 2 1/8 X 3/8	5.94
PC01244517:001	JACKSON TRUCK SERVICE	SEAT AIR BAGS	176.40
PC01244395:001	JACKSON TRUCK SERVICE	AIR DRYER GOVERNOR KIT	81.25
97	JOHN D BRUNDAGE &	AUGUST SERVICES	2,580.00
98	JOHN D BRUNDAGE &	SEPT & OCT SERVICES	5,450.00
303530	JUSTICE FENCE	KEYSWITCHES FOR POWERHOUSE GATE	280.00
CM142	KENNEDY INDUSTRIES IN	REIMBURSEMENT RECEIVED FOR INV 3480	120.00
9302048708	LAWSON PRODUCTS	HEAT SEAL BUTT CONN, QUICK SLIDE	440.14
1028598	LEGG LUMBER	SPF	38.50
1028835	LEGG LUMBER	3" EXT SCR STAR DR 5#	23.99
16	MAGIC MAIDS	NOVEMBER CLEANING & APT #426	1,500.00
16370	MARSHALL MEDICAL ASSO	PHYSICALS, DRUG SCREENS	454.00
623	MARSHALL TIRE CITY	4 NEW TIRES INSTALLED, #116	880.36
879	MARSHALL TIRE CITY	DISMOUNT & MOUNT 2 TIRE	710.20
64899	MIDWEST TRANSIT EQUIP	STARCRAFT REPAIR	392.12
64805	MIDWEST TRANSIT EQUIP	CYLINDERS, GEAR RACK WELDMENT	545.44
64835	MIDWEST TRANSIT EQUIP	MICROSWITCH	9.50
574	MUNETRIX LLC	LEVEL 3	1,153.05
362625	NAPA OF MARSHALL	BULB	0.47
441601	NYE UNIFORM COMPANY	PANTS	80.85
441598	NYE UNIFORM COMPANY	PANTS	94.36
441606	NYE UNIFORM COMPANY	STREETGEAR PANTS	73.50
441658	NYE UNIFORM COMPANY	PANTS	73.50
441664	NYE UNIFORM COMPANY	PANTS	73.50
441657	NYE UNIFORM COMPANY	PANTS	73.50
441665	NYE UNIFORM COMPANY	PANTS	73.50
5779107	POWER LINE SUPPLY	GLOVES	171.60
5779109	POWER LINE SUPPLY	GLOVES	182.88
5779345	POWER LINE SUPPLY	CARRIAGE BOLT 3/8" X 5"	155.00
5779343	POWER LINE SUPPLY	INVENTORY ITEMS	469.00
5781332	POWER LINE SUPPLY	GLOVES	172.32
281996001 001	PRINTEK INC	PAPER	146.30
6061	QUALITY ENGRAVING SER	SPONSOR PLAQUES FOR SOFTBALL & VOLLEYBA	462.00
514	QUALITY LAWN CARE	GOLDEN RULE LAWN CARE	560.00
8791	RADIO COMMUNICATIONS	SERVICE CALL	225.00
8774	RADIO COMMUNICATIONS	DOWNLOADED NEW GHOST FILE FROM COBAN	374.16
8010A	REDSTONE ARCHITECTS I	ARCHITECT FEES FROM FTCH COSTS	6,851.46
8010	REDSTONE ARCHITECTS I	DESIGN FEE FOR ONE STORY BUILDING CHANG	21,285.00
8011	REDSTONE ARCHITECTS I	SCHEMATIC DESIGN FEES	28,242.22
116349	RIVERSIDE INTEGRATED	BATTERY, SMOKE DETECTOR	551.00
17892	RS TECHNICAL SERVICE	CL2 & SO2 FEED SYSTEMS ANNUAL SERVICE	2,575.22
218288	SHRED CORP	50 LETTER LEGAL BOXES	895.00
26774	SLC METER LLC	TEST HYDRANT METER & TEST/REPAIR BACKFL	450.00
38-2284242	SPEARS FIRE & SAFETY	EXTINGUISHER RECHARGES AND RENTAL OF 1	160.00
29044	STANDARD PRINTING & O	DELIVERY CHARGE	7.00
28929	STANDARD PRINTING & O	DELIVERY CHARGE	7.00
28946	STANDARD PRINTING & O	BUSINESS CARDS - RAMEY	51.36
28964	STANDARD PRINTING & O	DRIVER PRE-TRIP INSPECTION	195.21
29110	STANDARD PRINTING & O	STAMPS	124.45
7000919423	STAPLES CONTRACT & CO	TONER, APPT BOOK, STORAGE BOX	132.42
843665	STATE OF MICHIGAN	LAB PROCEDURES - ZEBOLSKY	400.00
843652	STATE OF MICHIGAN	ACTIVATED SLUDE COURSE - HAZEL & PARKS	600.00
551-404610	STATE OF MICHIGAN	BASIC REID COURSE - ERNIE KNAUF	475.00
79347	TROUP ELECTRONICS INC	SERVICE BUS RADIO ANTENNA SYSTEM	298.00
			221,672.06

User: ctanner

DB: Marshall

EXP CHECK RUN DATES 11/30/2012 - 11/15/2013

UNJOURNALIZED OPEN

BANK CODE: MAIN

INVOICE NUMBER	VENDOR NAME	DESCRIPTION	AMOUNT
269789280611	A T & T	269 789-2806 635 7	65.16
269781981511-13	A T & T	269 781-9815 267 0	2,115.83
269789261511-13	A T & T	269 789-2615 963 4	71.90
269789467111-13	A T & T	269 789-4671 266 9	200.96
269789463011-13	A T & T	269 789-4630 541 5	331.93
269781907011-13	A T & T	269 781-9070 573 1	48.10
269781444711-13	A T & T	269 781-4447 749 4	133.28
100613	CALHOUN COUNTY CHIEF	MCTO-D, GARY METHENY	50.00
100513	CALHOUN COUNTY CHIEF	PICO, GARY METHENY	50.00
EQUAL-2013-0000000	CALHOUN COUNTY TREASU	NOVEMBER ASSESSMENT SERVICES	2,298.00
10/31/13	CALHOUN COUNTY TREASU	10/16/13--10/31/13 2013 SUMMER AD VALOR	12,029.82
103113	CALHOUN INTERMEDIATE	10/16/13--10/31/13 2013 SUMMER AD VALOR	3,573.42
620166	COMMERCIAL OFFICE PRO	CALCLTR, CRTDGS, TONER, PAPER, CALENDARS	293.91
202604694199	CONSUMERS ENERGY	1000 6880 0224	4.20
110213	DAMON, DONALD	BOOT ALLOWANCE	164.29
3166	HAYES, PHILIP	REFUND OVERPAYMENT OF TAXES P/N 53-001-	9.00
103113	KELLOGG COMMUNITY COL	10/16/13--10/31/13 2013 SUMMER AD VALOR	1,740.18
111213	L M ELECTRIC	REFUND OVERPAYMENT OF PERMIT FEE	5.00
82130231059095-111	LOWES BUSINESS ACCOUN	821 3023 105909 5	204.96
7681-1113	MARSHALL COMMUNITY CU	7681 - TARKIEWICZ	205.02
3960-1113	MARSHALL COMMUNITY CU	3960 - SCHWARTZ	655.00
5157-1113	MARSHALL COMMUNITY CU	5157 - FEDDERS	1,661.89
103113	MARSHALL DISTRICT LIB	10/16/13--10/31/13 2013 SUMMER AD VALOR	1,609.47
103113	MARSHALL PUBLIC SCHOO	10/16/13--10/31/13 2013 SUMMER AD VALOR	10,311.92
S3485746.001	MEDLER ELECTRIC COMPA	HANDLE LOCK REPLACEMENT	60.11
103013	MICHIGAN STATE FIREME	2014 MEMBERSHIP--JAMES SCHWARTZ	75.00
E4513	MRPA	2014 MRPA CONFERENCE & TRADE SHOW	375.00
790004405582930711	NEOFUNDS BY NEOPOST	7900 0440 5582 9307	3,000.00
5971690X	NFPA	MEMBERSHIP - GREG MCCOMB	430.00
4864	PRECISION LAWN CARE	MOW & TRIM	650.00
110713	SEIFERT, GEORGE & SHE	FURNACE & THERMOSTAT - ENERGY OPTIMIZAT	165.00
110713	ST MARY CHURCH	FURNACE - ENERGY OPTIMIZATION	150.00
111113	TRUDEAU, TERI	SUPPLIES	20.00
239468432	U.S. BANK EQUIPMENT F	LEXMARK XS463 COPIER CONTRACT	58.56
9714238129	VERIZON WIRELESS	ACCT #987146080-00001	76.10
			42,893.01
		Prescription reimbursement	3.10
		Total Cash Disbursements	\$42,896.11

User: ctanner

DB: Marshall

EXP CHECK RUN DATES 11/22/2013 - 11/22/2013

UNJOURNALIZED

OPEN

INVOICE NUMBER	VENDOR NAME	DESCRIPTION	AMOUNT
ALLMI550-1213	ALLSTATE WORKPLACE DI	ALLMI550	752.03
Z1406436NK	AMERICAN MESSAGING	ACCT #Z1-406436	97.93
287238047810X11111	AT&T MOBILITY	ACCT #287238047810	45.12
7016312710/0009-12	BLUE CROSS BLUE SHIEL	GROUP #007016312710/0009 DECEMBER	14,338.39
7016312710/0008-12	BLUE CROSS BLUE SHIEL	GROUP #007016312710/0008 DECEMBER	61,503.41
7016312710/0007-12	BLUE CROSS BLUE SHIEL	GROUP #007016312710/0007 DECEMBER	50,635.56
7016312710/0005	BLUE CROSS BLUE SHIEL	GROUP #007016312710/0005	1,804.01
111513	BURGHORF, CODY	BOOT ALLOWANCE	80.56
29-001900-30	CAMERON WEAVER	REFUND UTILITY DEPOSIT	31.32
315131113022177	CAPITAL ONE COMMERCIA	ACCT #6004-3004-9900-5848	133.53
620835	COMMERCIAL OFFICE PRO	PAPER, MARKERS	210.00
RIS0000427719	DELTA DENTAL PLAN OF	CLIENT #MIO22820001 DECEMBER	4,861.21
111713	DRUMM, CODY	MEAL	10.00
111513	FEDDERS, CARL	WHAT'S BREWING MARSHALL	7.00
111713	FISHER, CHARLIE	MEAL	10.00
111313	HOOKE CAR WASHES	RETRO-FIT LIGHTING	420.00
27-064600-07	HUNTINGTON NATIONAL B	REFUND UTILITY DEPOSIT	27.92
11/19/13	LEACH, DOUG	CDL DRIVERS LICENSE RENEWAL	47.00
99007320387-1113	LOWES BUSINESS ACCOUN	ACCT #9900 732038 7	2,190.13
111513	MARSHALL AREA GARDEN	SHARON LINKLATER--LIFETIME MEMBERSHIP	105.00
28-035200-01	MARSHALL ASSOC 1 LLC	REFUND UTILITY OVERPAYMENT	314.15
28-035600-04	MARSHALL ASSOC 1 LLC	REFUND UTILITY OVERPAYMENT	13.37
4562-1113	MARSHALL COMMUNITY CU	4562 - HUESTIS	358.27
2998-1113	MARSHALL COMMUNITY CU	2998 - DIXON	874.05
5165-1113	MARSHALL COMMUNITY CU	5165 - TRUDEAU	330.66
111713	MCFADDEN, RODNEY	MEAL	10.00
S3491951.001	MEDLER ELECTRIC COMPA	CODING TAPE	49.08
111713	MEYER, STEVE	MEAL	20.00
2014	MICHIGAN ASSOC OF MUN	2014 MEMBERSHIP - TRISHA NELSON	60.00
9262	MICHIGAN MUNICIPAL LE	CDL CONSORTIUM DRIVERS FEE	2,030.00
111713	MORRIS EVANS	MEAL	10.00
24-023200-11	NATASHA BRANDE	REFUND UTILITY DEPOSIT	59.22
29-005200-25	SHEPHERD, LARRY	REFUND UTILITY DEPOSIT	7.95
100313	SPARTAN STORES	LED CASE LIGHTING, OCCUPANCY SENSORS, C	11,295.00
110713	TAYLOR, MARY	FURNACE & THERMOSTAT	165.00
111713	TICE, LUCAS	MEAL	10.00
1766	TOTAL FOUNDATIONS	REFUND DEPOSIT/OVERPAYMENT	250.00
9714406054	VERIZON WIRELESS	ACCT #683169426-00001	88.46
112113	WEBB, COLLEEN	CASH ADVANCE FOR EMPL RECOGNITION PARTY	120.00
10040764-1113	WOW! BUSINESS	ACCT #010040764	1,361.95
			154,737.28
		Prescription Reimbursements	15.00
		Total Cash Disbursements	\$154,752.28



**ADMINISTRATIVE REPORT**

**December 3, 2013 - CITY COUNCIL MEETING**

**TO:** Honorable Mayor and City Council

**FROM:** James M. Schwartz, Public Safety Director  
Tom Tarkiewicz, City Manager

**SUBJECT:** Repeal Ordinance 130.01 ***Begging***

**BACKGROUND:** The City of Marshall, Michigan has previously enacted an ordinance making it unlawful for any person to wander about and beg in the streets, or from house to house, or sit, stand or take a position in any place and beg from passers-by, either by words, gestures or by the exhibiting of a sign.

The United States District Court for the Western District of Michigan has ruled that the Michigan statute after which the Marshall City Ordinance was drafted violates the First Amendment to the United States Constitution;

**RECOMMENDATION:** It is the recommendation from the City Attorney through the Public Safety Director and the City Manager after hearing comments at the public hearing, to repeal ordinance 130.01 restricting ***Begging***. The current ordinance is in direct contradiction of the U.S. District Court ruling. The repeal of Ordinance 130.01 is attached.

**FISCAL EFFECTS:** None expected

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

A handwritten signature in cursive script that reads "James M. Schwartz".

James M. Schwartz  
Public Safety Director

A handwritten signature in cursive script that reads "Tom Tarkiewicz".

Tom Tarkiewicz  
City Manager

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CITY OF MARSHALL, MICHIGAN

ORDINANCE NO. 2013-

**AN ORDINANCE REPEALING § 130.01 BEGGING;**

**WHEREAS**, the City of Marshall, Michigan has previously enacted an ordinance making it unlawful for any person to wander about and beg in the streets, or from house to house, or sit, stand or take a position in any place and beg from passers-by, either by words, gestures or by the exhibiting of a sign; and

**WHEREAS**, the City of Marshall's ordinance proscribing begging was substantially similar to a Michigan statute codified at MCL 750.167(1)(h); and

**WHEREAS**, the United States District Court for the Western District of Michigan has ruled that the Michigan statute after which the Marshall City Ordinance was drafted violates the First Amendment to the United States Constitution;

**NOW, THEREFORE,**

**THE CITY OF MARSHALL ORDAINS** that Section 130.01 of the Marshall City Code is hereby repealed in its entirety.

**REPEALER**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect, and the City Of Marshall City Code shall remain in full force and effect, amended only as specified above.

**SEVERABILITY**

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

**SAVINGS**

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

**EFFECTIVE DATE**

The provisions of this Ordinance are hereby ordered to take effect on the date provided by applicable law following publication.

**ENACTMENT**

This ordinance is declared to have been enacted by the City Council of the City of Marshall at a meeting called and held on the 3rd day of December, 2013, and ordered to be given publication in the manner prescribed by law.

AYES:

NAYES:

ABSTENTIONS:

STATE OF MICHIGAN

COUNTY OF CALHOUN

I, Trisha Nelson, the undersigned, the qualified and acting City Clerk of the City of Marshall, Calhoun County, Michigan, do certify that the foregoing is a true and complete copy of the ordinance adopted by the City Council of the City of Marshall at a meeting called and held on the 3rd day of December, 2013, the original of which is on file in my office.

---

Trisha Nelson, Clerk

Adopted:

Published:



**ADMINISTRATIVE REPORT**

**December 3, 2013 - CITY COUNCIL MEETING**

**TO:** Honorable Mayor and City Council

**FROM:** James M. Schwartz, Public Safety Director  
Tom Tarkiewicz, City Manager

**SUBJECT:** Amend Chapter 91 PARKS AND RECREATION  
Section 91.05

**BACKGROUND:** Chapter 91 PARKS AND RECREATION Section 91.05 reads:

*It shall be unlawful for any person, except authorized peace officers, to possess, display, on any land operated under the jurisdiction of City of Marshall, any gun including shotgun, rifle, pistol, revolver, air or BB gun, sling shot, bow and arrow, switchblade knife with spring loaded blade, throwing knife, tomahawk, or throwing axe, unless specifically authorized by the City Council.*

The Marshall City Ordinance violates the Second Amendment to the United States Constitution. Therefore the following changes are presented for approval by City Council for Section 91.05.

(A) *It shall be unlawful for any person, except authorized peace officers, to discharge on any land operated under the jurisdiction of City of Marshall, any gun including shotgun, rifle, pistol, revolver, air or BB gun unless specifically authorized by the City Council or unless discharged in the lawful defense of oneself or another.*

(B) *It shall be unlawful for any person, except authorized peace officers, to possess, display, or use on any land operated under the jurisdiction of City of Marshall, any sling shot, bow and arrow, switchblade knife with spring loaded blade, throwing knife, tomahawk, or throwing axe, unless specifically authorized by the City Council.*

**RECOMMENDATION:** After hearing comments at the public hearing, it is recommended that City Council approve the recommended adoption changes for Chapter 91 PARKS AND RECREATION Section 91.05.

**FISCAL EFFECTS:** None expected

Respectfully submitted,

James M. Schwartz  
Public Safety Director

Tom Tarkiewicz  
City Manager

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CITY OF MARSHALL, MICHIGAN

ORDINANCE NO. 2013-

**AN ORDINANCE AMENDING § 91.05 WEAPONS AND FIREARMS;**

**WHEREAS**, the City of Marshall, Michigan has previously enacted an ordinance generally making it unlawful for persons to carry certain weapons and firearms upon city owned land, including parks; and

**WHEREAS**, the City of Marshall's Ordinance conflicts with Michigan statutes (M.C.L. 123.1102 *et. seq.*) that limit a municipality's ability to regulate firearms;

**NOW, THEREFORE,**

**THE CITY OF MARSHALL ORDAINS** that Section 91.05 of the Marshall City Code is hereby amended as set forth herein. The text of Section 91.05 is stricken and is replaced with the following:

§ 91.05 WEAPONS AND FIREARMS.

(A) It shall be unlawful for any person, except authorized peace officers, to discharge on any land operated under the jurisdiction of City of Marshall, any gun including shotgun, rifle, pistol, revolver, air or BB gun unless specifically authorized by the City Council or unless discharged in the lawful defense of oneself or another.

(B) It shall be unlawful for any person, except authorized peace officers, to possess, display, or use on any land operated under the jurisdiction of City of Marshall, any sling shot, bow and arrow, switchblade knife with spring loaded blade, throwing knife, tomahawk, or throwing axe, unless specifically authorized by the City Council.

**REPEALER**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect, and the City Of Marshall City Code shall remain in full force and effect, amended only as specified above.

**SEVERABILITY**

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such

section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

### **SAVINGS**

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

### **EFFECTIVE DATE**

The provisions of this Ordinance are hereby ordered to take effect on the date provided by applicable law following publication.

### **ENACTMENT**

This ordinance is declared to have been enacted by the City Council of the City of Marshall at a meeting called and held on the 3<sup>rd</sup> day of December , 2013, and ordered to be given publication in the manner prescribed by law.

AYES:

NAYES:

ABSTENTIONS:

STATE OF MICHIGAN

COUNTY OF CALHOUN

I, Trisha Nelson, the undersigned, the qualified and acting City Clerk of the City of Marshall, Calhoun County, Michigan, do certify that the foregoing is a true and complete copy of the ordinance adopted by the City Council of the City of Marshall at a meeting called and held on the 3<sup>rd</sup> day of December, 2013, the original of which is on file in my office.

---

Trisha Nelson, Clerk

Adopted:

Published:



**ADMINISTRATIVE REPORT**  
**DECEMBER 3, 2013 - CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council Members

**FROM:** Natalie Dean, Director of Community Services  
Tom Tarkiewicz, City Manager

**SUBJECT:** Public Hearing to hear comments on Proposed Amendment to §156.122 and for Addition §156.205 to General Standards and Exceptions, Use Standards: Laboratories

**BACKGROUND:** On May 16, 2013, the Zoning Board of Appeals granted a Use Variance to a partial "laboratory" business in the B-3 District. Laboratories are currently only allowed in the industrial districts within the City. The ZBA referred the Laboratory definition back to the Planning Commission for further examination. During their review of the definition, commissioners began discussion on the current uses allowed in the B-3 District which may contain hazardous materials, similar to the business that was given a Use Variance by the ZBA.

After discussions and comparisons of allowed uses in the B-3 that may use hazardous material, the Planning Commission proposed that "Laboratories" be allowed within the B-3 District as a Special Land Use. Commissioners determined that the process of review involved in getting a Special Land Use permit would reasonably protect neighboring businesses from a hazardous material used in a laboratory.

Therefore, the Planning Commission held a public hearing on October 9, 2013 on the proposed changes. No members of the public were present to comment.

***MOTION*** by Banfield, supported by Goodman, to recommend to City Council ordinance changes and additions to:

- §156.122 B-3 Neighborhood Commercial District, Land Uses Subject to Special Conditions, to add "Laboratories, in conformance with §156.205";
- § 156.205 General Standards and Exceptions, Laboratories

*Commissioners discussed the attorney's recommended definition of Hazardous Material and agreed that if Hazardous Materials will be used within the B-3 district and the guidelines are followed, the appropriate review steps should insure safety. Commissioners further discussed the frequency that the fire department can inspect a business that uses hazardous materials. They would like the fire department to be able to inspect as deemed necessary. Commissioners agreed to make the following changes to B, 4 to state:*

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- (B), 4) *The City Fire Department shall perform an initial safety check upon the opening of the business and shall be permitted to inspect as deemed necessary.*

On a voice vote; **MOTION CARRIED.**

There are two minor changes to the ordinance that were suggested by the City Attorney after Planning Commission's review. Those changes are:

- "Hazardous material as defined..." Changed "defined" to "designated"
- "...shall be permitted to inspect as deemed necessary" Add "by the Director of Public Safety"

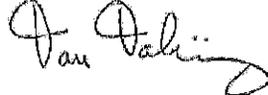
**RECOMMENDATION:** The Planning Commission recommends that after hearing public comments, the proposed amendment to §156.122 and for addition §156.205 to General Standards and Exceptions, Use Standards: Laboratories be approved.

**FISCAL EFFECTS:** None at this time.

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

  
Natalie Dean  
Director of Community Services

  
Tom Tarkiewicz  
City Manager

**CITY OF MARSHALL  
ORDINANCE #-13**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE, CHAPTER AND SECTION 156.122 (L), ADD NEW SUBSECTION (M) AND TO ADD CHAPTER AND SECTION 156.205: LABORATORIES. THE CITY OF MARSHALL ORDAINS:

**Section 1.** That chapter and section **§156.122 B-3 Neighborhood Commercial District, Land Uses Subject to Special Conditions** of the Marshall City Code, is hereby amended to replace subsection (L) with:

“Laboratories, in conformance with §156.205”

**Add new subsection (M) as:**

“Other uses not specifically stated or implied elsewhere which, in the determination of the Planning Commission, are similar to the principal permitted uses provided herein, and are in harmony with the character of the downtown.”

**Section 1a.** That chapter and section **§156.109-204 General Standards and Exceptions, Use Standards** of the Marshall City Code, is hereby amended to add section and language:

- **§ 156.205 LABORATORIES.**

Hazardous Material as designated by the Pipeline and Hazardous Materials Safety Administration, 49 CFR §172.101-§172.102.

Laboratory uses shall be subject to the following:

(A) Licensing: In accordance with applicable State laws; all laboratories shall be registered by the State of Michigan and shall comply with the standards outlined for such facilities;

(B) Business will follow all local and state regulations regarding handling of hazardous material. The Fire Department will establish regulations on a per business basis under the following guidelines:

- 1) Small amounts of hazardous material, exact amount to be determined by the Fire Department, are allowed within the B-3 District;
- 2) All hazardous materials must be marked and stored in a state approved container and kept in a safe and secure location;

- 3) For disposal of hazardous materials, owner must acquire hazmat removal service from a State approved company;
- 4) The City Fire Department shall perform an initial safety check upon the opening of the business and shall be permitted to inspect as deemed necessary by the Director of Public Safety.

**Section 2.** This Ordinance [or a summary thereof as permitted by MCL 125.3401] shall be published in the *Marshall Chronicle*, a newspaper of general circulation in the City of Marshall qualified under state law to publish legal notices. This Ordinance shall be recorded in the Ordinance Book and such recording shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 3.** This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
James L. Dyer, MAYOR

\_\_\_\_\_  
Trisha Nelson, CITY CLERK

I, Trisha Nelson, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on December 3, 2013, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available by said Act.

\_\_\_\_\_  
Trisha Nelson, CITY CLERK



**ADMINISTRATIVE REPORT**  
**DECEMBER 3, 2013 - CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council Members

**FROM:** Natalie Dean, Director of Community Services  
Tom Tarkiewicz, City Manager

**SUBJECT:** Public Hearing to hear comments on Proposed Additions to §156.003 Definitions and §156.221 Accessory Structures and Uses regarding Donation Collection Bins

**BACKGROUND:** The Planning Commission is recommending that language be added to the zoning ordinance that directly pertains to donation collection bins. The commission deliberated on how to handle this issue over the period of a couple meetings and finally concluded that these bins have the potential to be more of a nuisance concern than a benefit to the city.

Many cities have tackled this issue in the last year or two and the situation has been handled in a variety of ways; sometimes there is a permit system for the bins, some cities only allow bins by non-profit associations and some choose to prohibit them all together. After looking at a variety of different approaches, the commission held a public hearing on October 9, 2013 and recommended to add language to the ordinance to prohibit unattended donation bins. There were no members of the public present to remark on the ordinance changes at the public hearing.

***MOTION*** by Davis, supported by Banfield, to recommend to City Council ordinance changes to add "Donation Collection Bins" and "Unattended Donation Collection Bins" to Marshall City Zoning Ordinance, §156.003 Definitions. On a voice vote; ***MOTION CARRIED.***

After suggestions from council members at the November 4, 2013 meeting, staff took the ordinance change back to Planning Commission for further revision. The revision includes a basic definition for "Donation Collection Bin" in section §156.003 and regulation of these bins in §156.221. Commissioner's expressed that the intention is to not "prohibit" these bins, but to only allow bins within the City that are "serviced" on a daily basis thereby hopefully eliminating bins that can become unsightly. The city's Code Enforcement Officer will be responsible for enforcing this ordinance.

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**RECOMMENDATION:** The Planning Commission recommends that after public comments are heard, City Council approve language additions for "Donation Collection Bins" to §156.003 Definitions and to §156.221 Accessory Structures and Uses.

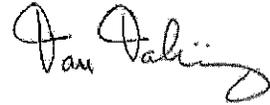
**FISCAL EFFECTS:** None at this time.

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,



Natalie Dean  
Director of Community Services



Tom Tarkiewicz  
City Manager

**CITY OF MARSHALL  
ORDINANCE #-13**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE, CHAPTER AND SECTION 156.003 DEFINITIONS AND 156.221 ACCESSORY STRUCTURES AND USES. THE CITY OF MARSHALL ORDAINS:

**Section 1.** That chapter and section **156.003 DEFINITIONS** of the Marshall City Code, is hereby amended to add the following definitions:

Donation Collection Bin. A receptacle or container designed with a door, slot or other opening and which is intended to receive items donated from the public such as clothing, household items, or other salvageable personal property. This term does not include recycle bins for the collection of recyclable material, any rubbish or garbage receptacle.

**Section 1a.** That chapter and section **156.221 ACCESSORY STRUCTURES AND USES (L)** of the Marshall City Code, is hereby amended to add the following language:

(L) *Additional Standards.* The following additional standards shall apply to attached garages, accessory mechanical equipment, egress window wells, flagpoles, and donation bins:

**Section 1b.** That chapter and section **156.221 ACCESSORY STRUCTURES AND USES (L) (7)** of the Marshall City Code, is hereby amended to add the following language:

(7) *Donation Collection Bin.* Any donation bin which is not serviced on a daily basis by the owner of the bin, or owner's representative, is prohibited in the City of Marshall.

**Section 2.** This Ordinance [or a summary thereof as permitted by MCL 125.3401] shall be published in the *Marshall Chronicle*, a newspaper of general circulation in the City of Marshall qualified under state law to publish legal notices. This Ordinance shall be recorded in the Ordinance Book and such recording shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 3.** This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
James L. Dyer, MAYOR

\_\_\_\_\_  
Trisha Nelson, CITY CLERK

I, Trisha Nelson, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on December 3, 2013, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available by said Act.

\_\_\_\_\_  
Trisha Nelson, CITY CLERK



**ADMINISTRATIVE REPORT**  
**December 3, 2013 - CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council  
**FROM:** Carl Fedders, Director of Public Services  
Tom Tarkiewicz, City Manager  
**SUBJECT:** Water and Sewer Rate Ordinance Amendment

**BACKGROUND:** The City of Marshall contracted with Municipal Analytics to conduct an analysis on the water and sewer rates. As a result of that analysis, the attached amendment to the ordinance is recommended. These recommended changes are being proposed in three separate stages with effective dates of January 1, 2014, January 1, 2015, and January 1, 2016.

The impacts of these changes have been summarized below for a large residential customer, a commercial customer who has a dishwashing operation, and industrial customer using 50,000 cft of water:

**January 2014**

Residential (1,000 cft per month)	1.5%
Commercial (30,000 cft per month)	2.1%
Industrial (50,000 cft per month)	1.8%

**January 2015**

Residential (1,000 cft per month)	1.8%
Commercial (30,000 cft per month)	2.3%
Industrial (50,000 cft per month)	3.2%

**January 2016**

Residential (1,000 cft per month)	2.3%
Commercial (30,000 cft per month)	2.3%
Industrial (50,000 cft per month)	3.1%

**RECOMMENDATION:** After hearing public comment, it is recommended that the City Council approve the proposed amendments to Chapter 53 Rates, of the City of Marshall Code of Ordinances.

**FISCAL EFFECTS:** The proposed FY 2014, FY 2015 and FY 2016 Water rates will increase expected revenue by \$19,500, \$42,000 and \$60,000, respectively. The proposed FY 2014, FY 2015 and FY 2016 Wastewater rates will increase the expected revenue by \$7,500, \$24,000 and \$16,000, respectively.

**ALTERNATIVES:** As suggested by the Council.

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Respectfully submitted,

Carl Fedders  
Director of Public Services

Tom Tarkiewicz  
City Manager

**CITY OF MARSHALL  
ORDINANCE 2013-\_\_**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE §53 RATES OF THE MARSHALL CITY CODE OF ORDINANCES.

THE CITY OF MARSHALL ORDAINS:

**Section 1.** That the Marshall City Code §53 be amended as follows:

**CHAPTER 53: RATES**

**§ 53.01 WATER RATES.**

(A) All metered water shall be charged to a two-part rate consisting of a readiness to serve charge plus a commodity charge.

(B) Water Readiness to Serve Charge shall be billed by meter size. The effective rates are included in the table below:

Meter Size	Readiness to Serve Charge As of: January 1, 2014	Readiness to Serve Charge As of: January 1, 2015	Readiness to Serve Charge As of: January 1, 2016
1" or smaller	\$ 18.12	\$ 18.27	\$ 18.68
1.5"	\$ 48.00	\$ 48.00	\$ 48.00
2"	\$ 86.50	\$ 86.50	\$ 86.50
3"	\$ 195.00	\$ 195.00	\$ 195.00
4"	\$ 365.00	\$ 365.00	\$ 365.00
6"	\$ 785.00	\$ 785.00	\$ 785.00

(1) The Readiness to Serve Charge outside the corporate limits of the City of Marshall shall be 200% of the rate as established for use within the corporate limits of the City of Marshall, Michigan.

(2) When a battery of more than one meter is used in the place of a large single meter, then the readiness to serve charge shall be the charge of the single sized meter times the number of meters composing the battery.

(3) The "Readiness to Serve Charge" covers the cost necessary to keep the Water Works in good operating condition, and other fixed costs as designated by Council and is the amount of the minimum bill.

(C) Water Commodity Charges shall be based on actual consumption. The effective rates are included in the table below:

Cubic Foot		Commodity Charges As of: January 1, 2014 (per 100cft)	Commodity Charges As of: January 1, 2015 (per 100cft)	Commodity Charges As of: January 1, 2016 (per 100cft)
Up to	3,000	\$ 2.2200	\$ 2.3000	\$ 2.4200
Next	12,000	\$ 1.7800	\$ 1.8400	\$ 1.9400
Beyond	15,000	\$ 1.3300	\$ 1.3800	\$ 1.4500

(I) Commodity Charge outside the corporate limits of the City of Marshall shall be: 200% of the rate as established for use within the corporate limits of the City of Marshall, Michigan.

(D) Automatic sprinkler services or hose connections for fire protection services only will be charge the following rates:

Connection Size	Charge per Annum
6" or smaller	\$120
8"	\$220
10"	\$340
12"	\$500

(E) The City may provide a fire hydrant connection for Circuses, Tent Shows, Carnivals, Exhibitions, and for Construction purposes. Fees and charges shall be established by resolution. The Meter Security Deposit will be returned when the hydrant meter is returned without damage. Any loss or damage to the reducing connection, valve, hydrant, meter or operating wrench will be charged to the person making application for the use of the hydrant. On large construction projects, the Water Department may require the setting of an appropriate meter and to charge for water and service as for regular service supply.

(F) All service taps to water mains shall be made by the Water Department except when approved by the Water Superintendent. The charge for the water main tapping shall be paid by the customer and shall include all materials, equipment, and contracted costs incurred by the City.

(G) The City may provide meter testing. The meter testing fees shall be established by resolution. If, after testing, the meter is found to be in error above allowable percent, which is two percent (2%) plus or minus, then the amount deposited will be refunded, but if the water meter is found to be registering within the test limits, then the amount deposited will be retained to cover the cost of the testing.

(H) A turn-on fee for the restoration of service during business hours or after business hours will be charged to a customer in order to reconnect his service if service has been interrupted. A turn-on fee shall be established by resolution.

(I) Anyone seeking to make a connection to any public water main within the City of Marshall shall first obtain a permit to make such connection from the offices of the City of Marshall. Prior to the issuance of said permit, the applicant must pay to the City a Water Connection Fee representing the cost of construction of that portion of the City-wide water system attributable to the proportionate benefit to be received by the applicant's property.

(I) The Water Connection Fee shall be based on a unit factor system wherein each single-family residence shall be classified as one unit. Other occupational uses shall be charged on multiples of units as may be determined by resolution of the City Council from time to time. Said units and multiples thereof will be established and computed on the same basis as for the Sanitary Sewer Connection Fee contained further in this Section and the number of units charged to a premise shall be the same for both water and sanitary sewer. The Water Connection Fee shall be established by resolution. The fee for premises connected from outside the corporate limits of the City of Marshall shall be 1.5 times the in-city rate.

(J) Designated irrigation meters will only be billed between the months of May to September.

(K) The Charges for water services set forth in this ordinance and furnished to any premises are a lien on the premises to which this service is provided and those charges which are delinquent for six (6) months or more shall be certified by the City Treasurer to the City Assessor who shall enter the charges on the next tax roll against the premises to which the services have been rendered. Said charges shall be a lien as of the date services are provided and shall be enforced in the same manner as provided for by the collection of the taxes assessed upon the tax roll and the enforcement of the lien for taxes. The City Treasurer may certify all charges delinquent for six (6) months or more at any time prior to the date on which the City tax roll is approved.

**§ 53.02 SEWER RATES.**

(A) Monthly Rates for sewer service inside the corporate limits of the City of Marshall shall be:

Water Meter Size	Service Charge As of January 1, 2014	Service Charge As of January 1, 2015	Service Charge As of January 1, 2016
1" or smaller	\$ 14.48	\$ 14.54	\$ 14.72
1 1/2"	\$ 28.96	\$ 29.08	\$ 29.44
2"	\$ 34.75	\$ 37.80	\$ 41.22
3"	\$ 39.10	\$ 52.34	\$ 66.24
4"	\$ 69.50	\$ 104.69	\$ 141.31
6"	\$ 104.26	\$ 157.03	\$ 211.97

(B) Monthly Rates for sewer service outside the corporate limits of the City of Marshall shall be:

Water Meter Size	Service Charge As of January 1, 2014	Service Charge As of January 1, 2015	Service Charge As of January 1, 2016
1" or smaller	\$ 15.98	\$ 16.04	\$ 16.22
1 1/2"	\$ 30.46	\$ 30.58	\$ 30.94
2"	\$ 36.25	\$ 39.30	\$ 42.72
3"	\$ 40.60	\$ 53.84	\$ 67.74

(C) The Sewer commodity charge shall be:

	Commodity Charge per 100 cft As of January 1, 2014	Commodity Charge per 100 cft As of January 1, 2015	Commodity Charge per 100 cft As of January 1, 2016
Within the City of Marshall	\$ 3.11	\$ 3.16	\$ 3.18
Outside the City of Marshall	\$ 4.67	\$ 4.74	4.77

(D) Flat rate customer shall pay the following rates in addition to appropriate service charge:

Flat Rate As of January 1, 2014	Flat Rate As of January 1, 2015	Flat Rate As of January 1, 2016
\$ 34.70	\$ 35.08	35.39

(E) The sewer commodity may be reduced for residential customers because of lawn sprinkling. The procedure and policy for the sewer discount will be part of the Rules and Regulations.

(F) Anyone seeking to make a connection to any sanitary sewer system within the City of Marshall shall first obtain a permit to make such connection from the offices of the City of Marshall. Prior to the issuance of said permit, the applicant must pay to the City a Sanitary Sewer Connection Fee representing the cost of construction of that portion of the City-wide sewer system attributable to the proportionate benefit to be received by the applicant's property.

(1) The Sanitary Sewer Connection Fee shall be based on a unit factor system wherein each single-family residence shall be classified as one unit. Other occupational uses shall be charged on multiples of units as may be determined by resolution of the City Council from time to time. The Sanitary Sewer Connection Fee shall be established by resolution. The fee for premises connected from outside the corporate limits of the City of Marshall shall be 1.5 times the in-city rate.

(G) The Charges for waste water services set forth in this ordinance and furnished to any premises are a lien on the premises to which this service is provided and those charges which are delinquent for six (6) months or more shall be certified by the City Treasurer to the City Assessor who shall enter the charges on the next tax roll against the premises to which the services have been rendered. Said charges shall be a lien as of the date services are provided and shall be enforced in the same manner as provided for by the collection of the taxes assessed upon the tax roll and the enforcement of the lien for taxes. The City Treasurer may certify all charges delinquent for six (6) months or more at any time prior to the date on which the City tax roll is approved.

**Section 2.** This Ordinance [or a summary thereof as permitted by MCL 125.3401] shall be published in the Marshall Chronicle, a newspaper of general circulation in the City of Marshall qualified under state law to publish legal notices. This Ordinance shall be recorded in the Ordinance Book and such recording shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 3.** This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
James Dyer, MAYOR

\_\_\_\_\_  
Trisha Nelson, City Clerk

#### CERTIFICATE

I, Trisha Nelson, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on December 3, 2013, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available by said Act.

\_\_\_\_\_  
Trisha Nelson, City Clerk



**ADMINISTRATIVE REPORT  
DECEMBER 3, 2013 - CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council Members

**FROM:** Natalie Dean, Director of Community Services  
Tom Tarkiewicz, City Manager

**SUBJECT:** Proposed Addition of Revised Language to §50.02 Garbage and Rubbish: Use of Containers on Private Property

**BACKGROUND:** Staff is recommending that the following language be added to §50.02 Garbage and Rubbish: Use of Containers on Private Property:

*Refuse containers, 20 cubic yards or greater, primarily used for the repair or alteration of any structure require a zoning permit pursuant to §156.421.*

The City currently takes zoning permit applications for construction dumpsters based on §156.421 which states, in summary, that it is *unlawful to repair or alter any structure without a zoning permit*. Most of the time, construction projects, whether they are commercial or residential, require a dumpster to be placed on the property, in the driveway, or sometimes in the street for a short period of time. The application for a zoning permit allows City staff to review the location of the dumpster and to be aware of the time frame the dumpster will be in its location. The property owner has the opportunity to change the time frame for no cost with a phone call.

At the public hearing on November 4th, Council asked staff to consider a revision of the language to clarify the overall goal of this ordinance and to define the size of a dumpster requiring a permit. In response to these comments, staff and the city attorney have changed the language to include a minimum size of dumpster that will need a permit and also added the language "used for repair or alteration" from the zoning permit section §156.421. Therefore, this particular ordinance will only address construction dumpsters. Staff is suggesting that any dumpster over 20 cubic yards require a permit due to their size (20 feet long by 3.5 feet high).

**RECOMMENDATION:** Staff recommends that Council adopt the revised addition of language to §50.02 Garbage and Rubbish: Use of Containers on Private Property.

**FISCAL EFFECTS:** None at this time.

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

Natalie Dean  
Director of Community Services

Tom Tarkiewicz  
City Manager

323 W. Michigan Ave.  
Marshall, MI 49068  
p 269.781.5183  
f 269.781.3835  
cityofmarshall.com

**CITY OF MARSHALL  
ORDINANCE #-13**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE, CHAPTER AND SECTION 50.02: GARBAGE AND RUBBISH; USE OF CONTAINERS ON PRIVATE PROPERTY. THE CITY OF MARSHALL ORDAINS:

**Section 1.** That chapter and section **50.02 Garbage and Rubbish: Use of Containers on Private Property** of the Marshall City Code, is hereby amended to add the following language:

*Refuse containers, 20 cubic yards or greater, primarily used for repair or alteration of any structure require a zoning permit pursuant to §156.421.*

**Section 2.** This Ordinance [or a summary thereof as permitted by MCL 125.3401] shall be published in the *Marshall Chronicle*, a newspaper of general circulation in the City of Marshall qualified under state law to publish legal notices. This Ordinance shall be recorded in the Ordinance Book and such recording shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 3.** This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
James L. Dyer, MAYOR

\_\_\_\_\_  
Trisha Nelson, CITY CLERK

I, Trisha Nelson, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on December 3, 2013, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available by said Act.

\_\_\_\_\_  
Trisha Nelson, CITY CLERK



**ADMINISTRATIVE REPORT**  
**December 3, 2013 - CITY COUNCIL MEETING**

**REPORT TO:** Honorable Mayor and City Council  
**FROM:** Cheryl Vosburg, Environmental Programs Coordinator  
Tom Tarkiewicz, City Manager  
**SUBJECT:** Marshall House/Consumers Energy – Restrictive Covenant

**BACKGROUND:** From 1934 to 1943 Consumers Power (now Consumers Energy) operated a Manufactured Gas Plant (MGP) at 200 E. Spruce St. which is now the home of the Marshall House. Soil and groundwater contamination occurred as a result of the MGP manufacturing process. MGP related contaminants include BETX (Benzene, Ethylbenzene, Toluene, Xylene), and Polycyclic Aromatic Hydrocarbons (PAHs). These constituents have been found in the soil and in groundwater. Clean up including removal of debris and coal tar and soil excavation began in 2000. In 2004, a low permeable groundwater containment system and an in-ground water treatment system were installed. Groundwater treatment and water and soil sampling are continuous and will continue indefinitely until such time as contamination ceases to exist. Consumers Energy will provide Annual Site Activity Reports to the City of Marshall and the Michigan Department of Environmental Quality (MDEQ).

Existing soil contamination is present on the site but potential exposure is prevented by barriers including asphalt, cement, and top soil. The City has a **Due Care Plan** which provides information and guidance for eliminating exposures of potential subsurface contamination as it relates to MGP constituents.

A **Restrictive Covenant (RC)** is an agreement, usually set forth in the deed, which limits how you can and can't use your property. In real estate transactions, restrictive covenants are binding legal obligations written into the deed of a property by the seller. In the case of the Marshall House/Consumers Energy (CE) Property there was no RC at the time of real estate transaction (1963). CE would like to pursue a "No Further Action" (NFA) designation from the MDEQ which means that the MDEQ agrees that CE has done all the clean-up that they can *reasonably* do and no further action is required. The NFA will not impact the current ground water treatment and required annual reporting. The RC is necessary for CE to pursue the NFA since the City owns the property for which is the NFA is being sought. The RC is very similar to the Due Care Plan which we currently enforce which includes limiting potential exposures via drinking water and soil disturbance, etc. The RC has been reviewed by the City Attorney and supports the signing of this document. The City Attorney has reviewed and approved the RC.

**RECOMMENDATION:** It is recommended that the City Council approve the signing of the Restrictive Covenant for the Marshall House Property.

**FISCAL EFFECTS:** All costs related to the environmental clean-up and the Restrictive Covenant has been and will continue to be borne by Consumers Energy.

**ALTERNATIVES:** As suggested by the Council.

Respectfully submitted,

Cheryl Vosburg  
Environmental Programs Coordinator

Tom Tarkiewicz  
City Manager

323 W. Michigan Ave.

Marshall, MI 49068

p 269.781.5183

f 269.781.3835

cityofmarshall.com

July 24, 2013

**WORKING COPY**

Cheryl Vosburg  
Environmental Program Coordinator  
Marshall Public Services Building  
901 Marshall Ave.  
Marshall, MI 49068

RE: MARSHALL HOUSE RESTRICTIVE COVENANT

Dear Cheryl,

Enclosed are two copies of the final Restrictive Covenant (RC) for the City's approval and signature on the "Consent of Owner" form. With the "Owners Consent", Consumers Energy will file the RC with the Calhoun County Register of Deeds and pay all recording fees. Once the RC is filed and a copy of the recorded RC is received, the City will receive a copy.

If the City Attorney has any questions regarding the "Consent" or if the signature portion of the "Consent" needs to be revised based on the City Attorney's review, please contact me. The body of the RC cannot be changed, for the MDEQ has approved the language of the RC.

Please advise us regarding the scheduling for a City Council meeting and we will be in attendance to address any additional questions that may arise at a City Council meeting.

In addition to the above enclosure, enclosed is copy of a "flier" that was distributed "door to door" to the neighborhood which provided a project overview and contact information regarding the 2004 project.

The DVD of the Rice Creek stream bank remediation will be forward under separate cover. The DVD is a time sequence of the remediation from beginning to end.

If there are any additional questions or concerns regarding the enclosures, please call me on 517-788-0350, or email me at [Robert.Neumann@cmsenergy.com](mailto:Robert.Neumann@cmsenergy.com).

Respectively,



Robert G Neumann PE  
Senior Engineer-Lead  
Risk Management

Enclosures; Restrictive Covenant (Two copies)  
Neighborhood Project Flier

O0713-24.RGN

1945 W. Farnall Road • Jackson, MI 49201 • Fax: 517 788 2329 • [www.consumersenergy.com](http://www.consumersenergy.com)

Cc Greg Zellmer, ARCADIS w/o enclosures  
Ron Coleman, Consumers Energy, Battle Creek w/o enclosures  
Ravi Adibhatla, Consumers Energy, Jackson w/o enclosures.

00713-24.RGN

**DECLARATION OF RESTRICTIVE COVENANT**

DEQ Reference No: RC-RD-201-12-066

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Calhoun County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 200 East Spruce Street, City of Marshall, Calhoun County and legally described in **Exhibit 1** attached hereto ("Property"). The Property is associated with the Consumers Energy – Marshall MGP property; MDEQ Site ID number 13000357.

The response activities that are being implemented to address environmental contamination at the Property pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The adequacy of the response activities implemented at the Property has not been subject to a facility-specific review by the Michigan Department of Environmental Quality (DEQ) nor has the DEQ determined that the response activities comply with Part 201 of the NREPA.

The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. The DEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

The response activities required the recording of this Restrictive Covenant with the Calhoun County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of Property is consistent with the exposure assumptions used to develop the Residential cleanup criteria under Section 20120a(1)(a) of the NREPA and the exposure control measures relied upon at the Property; and 3) to prevent damage or disturbance of any element of the response activity constructed on the Property.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the Residential cleanup criteria under Section 20120a(1)(a) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

**Exhibit 2** provides a survey of the Property that is subject to the land use or resource use restrictions specified herein.

Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"DEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, 2002 Michigan Register; Effective December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

#### Summary of Response Activities

Hazardous substances including benzene, toluene, ethylbenzene, and xylenes (BTEX), polynuclear aromatic hydrocarbons (PAHs), and some metals were detected in soil at the Property. Groundwater at the Property is also impacted by BTEX, PAHs, and some metals. Prior to recording this Restrictive Covenant, response activities have been undertaken to remove a substantial amount of the impacted soils. Response actions undertaken to date include soil removal of selected areas. Certain areas on the Property shall continue to contain levels of contaminants in soil which exceed the direct contact criteria of the Part 201 Rules. An exposure barrier consisting of 1-foot to 4-feet of clean soil and ground cover throughout the Property serves to prevent exposure to impacted soil at the Property. The barriers include the existing asphalt parking lot and drive ways; the existing concrete walkways and concrete pad; and the existing ground cover/landscaping on the overall extent of the Property as shown on **Figure 2a in Exhibit 3**, as provided herein.

During the remedial investigation and response activities, other non-MGP related materials and debris were observed buried and partially buried at the Property. These non-MGP related materials are attributed to historical site use activities including: the Royal Cycle Works machine and electroplating shop, the C.H. Egler Foundry and machine shop; and the Calhoun County Road Commission shop. The non-MGP related materials included:

- Buried asphalt and other paving debris located in the southern portion of the Site;
- Residual metal debris encountered in the southern portion of the Site; and
- Intermittent detections of zinc in groundwater above groundwater surface water interface (GSI) criteria that are attributed to historic buried metal debris.

The approximate location of these materials is shown on **Figure 3a in Exhibit 3**. Areas of the Property described in **Exhibit 1** containing these non-MGP related materials and debris have not been addressed through the response activities undertaken at the Property and may contain hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. However, the existing barriers, as described above, serve to prevent exposure to these non-MGP materials.

#### **NOW THEREFORE,**

##### 1. Declaration of Land Use or Resource Use Restrictions

Consumers Energy, with the express written permission of the Owner of the Property (City of Marshall), hereby declares and covenants that the Property shall be subject to the restrictions and conditions summarized below. Based on an evaluation of potential easement holders in the

area of the Property, there are no easement holders, besides the City of Marshall, on the Property.

a. Prohibited Activities to Eliminate Unacceptable Exposure to Hazardous Substances.

The Owner shall prohibit activities on the Property that may result in exposures to hazardous substances at the Property. These prohibited activities include:

1. Disturbance, generation, or movement of soil at the Property without prior notification to Consumers Energy and the DEQ. Any disturbance, generation, or movement of the soil in the impacted areas must be done in accordance with an appropriate health and safety plan and any soil or groundwater generated during such activities must be handled and disposed of in accordance with applicable solid waste regulations.
2. The construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:
  - a. Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
  - b. Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.
3. The existing 1-foot to 4 feet of clean soil and ground cover materials (including asphalt, concrete and vegetation) at the locations shown in Exhibit 3, Figure 2a, serves to prevent exposures to contaminated soils at the Property. Any excavation or other intrusive activity that could affect the integrity of these barriers is prohibited without prior notification to Consumers Energy, except during short-term construction or repair projects or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing these barriers, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.
4. The construction of new structures, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or, unless prior to construction of any structure, an evaluation of the potential for any hazardous substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and is in compliance with Section 20107a of the

NREPA.

b. Prohibited Activities to Ensure the Effectiveness and Integrity of the Response Activity.

The Owner shall prohibit activities on the Property that may interfere with any element of the response activities, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the response activities implemented at the Property. These prohibited activities include:

1. Any activity that would interfere with the function of or obstruct access to any monitoring wells and devices (specifically Monitoring Wells MW-1S, MW-1D, MW-2S, MW-2D, MW-4, MW-9S, MW-9D, MW-10, and GSI-5, see Exhibit 3, Figure 2a) located on the Property. This includes, but is not limited to, removing, destroying, or altering any well or device (see Exhibit 3, Figure 2a) in any way that renders it inoperable or incapable of functioning as intended.
2. Any excavation or activity that could affect the integrity, effectiveness, and operation of the groundwater containment (identified as "sea wall" in survey) and treatment system depicted in **Exhibit 3, Figure 2a**. The groundwater containment and treatment system consists of the low permeability, engineered, steel sheet pile barrier ("sea wall") and a network of French drains that channel groundwater through three in-ground, flow-through carbon treatment cells (Cell 1, Cell 2 and Cell 3).

c. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. Permanent Markers. The Owner shall not remove, cover, obscure, or otherwise alter or interfere with the permanent markers placed at the locations noted in **Exhibit 3, Figure 2a**. The Owner shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible. The permanent marker will read:

"In connection with the environmental cleanup of this property, certain compounds have been contained underground beneath landscaped and paved portions of the property approximately 6 inches beneath the surface. DIGGING, EXCAVATING, DRILLING, AND SIMILAR INTRUSIVE ACTIVITIES ON THIS PROPERTY, AS WELL AS ANY USE OF GROUNDWATER ARE STRICTLY PROHIBITED. Contact the City of Marshall House Management at (269) 781-2391 prior to ANY intrusive activities."

3. Access. The Owner grants to Consumers Energy and its designated representatives and to the DEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

4. Conveyance of Property Interest. The Owner shall provide notice to the DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for

compliance with the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Chief, Remediation Division, Michigan DEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, DEQ Reference Number RC-RD-201-12-066. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the DEQ or its successor determines that hazardous substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. This Restrictive Covenant may only be modified or rescinded with the written approval of the DEQ.

6. Enforcement of Restrictive Covenant. The State of Michigan, through the DEQ, and Consumers Energy may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

7. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

8. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant

IN WITNESS WHEREOF, **Consumers Energy** has caused this Restrictive Covenant, RC-RD-201-12-066, to be executed on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**Consumers Energy**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF **Michigan**  
COUNTY OF **Calhoun**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ of Consumers Energy, a *corporation*, on behalf of the corporation.

\_\_\_\_\_  
Notary Public Signature

Name \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

Prepared by:  
Robert G Neumann  
Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201

When Recorded Return to:  
Karen S Malewitz, EP&-465  
Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201

**CONSENT OF OWNER**

The City of Marshall, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant, RC-RD-201-12-066, and authorize Consumers Energy to file the Restrictive Covenant with the Calhoun County Register of Deeds for recording.

**The City of Marshall**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

**STATE OF Michigan**  
**COUNTY OF Calhoun**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, as attorney in fact on behalf of The City of Marshall.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Print or Type Name

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

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

Parcel owned by the City of Marshall:

Beginning at the intersection of the East line of Madison Street and the South line of Spruce Street, also being the Northwest corner of Lot 292 of the recorded Plat of Upper Village of Marshall, Section 25, Town 2 South, Range 6 West, Village of Marshall, Calhoun County, Michigan, as recorded in the Office of the Register of Deeds for Calhoun County, Michigan, in Liber 3 of Plats on pages 12 and 13; thence East along said South line of Spruce Street, 285.09 feet to a point 109.00 feet West of the Northeast corner of Lot 193 of said Plat; thence S 00°-33'-05" E, 132.00 feet; thence East 109.00 feet to the Southeast corner of said Lot 193; thence S 00°-33'-05" E, along the East line of Lot 200 of said Plat and the Southerly extension thereof, 165.00 feet to the centerline of vacated Pearl Street; thence East along said centerline 66.00 feet to the Northerly extension of the East line of Lot 208 of said Plat; thence S 00°-33'-05" E, along said East line of Lot 208 and the Northerly extension thereof, 214.85 feet to a point on the bank of Rice Creek; thence S 80°-04'-07" W, along said bank of Rice Creek 169.69 feet; thence continuing along said bank of Rice Creek, N 61°-34'-18" W, 252.48 feet to the Easterly line of the Westerly 66.00 feet of Lot 305 of said Plat; thence N 39°-51' W, parallel with the Westerly line of said Lot 305 a distance of 119.48 feet; thence N 50°-34'-50" E, parallel with the Southerly line of Pearl Street 97.35 feet; thence N 49°-47'-20" W, 133.42 feet to said Southerly line of Pearl Street; thence N 50°-34'-50" E, along said Southerly line of Pearl Street, 36.66 feet to the East line of Madison Street; thence N 00°-19'-50" W, along said East line of Madison Street 157.94 feet to the place of beginning. Containing 4.22 acres of land.

**EXHIBIT 2**

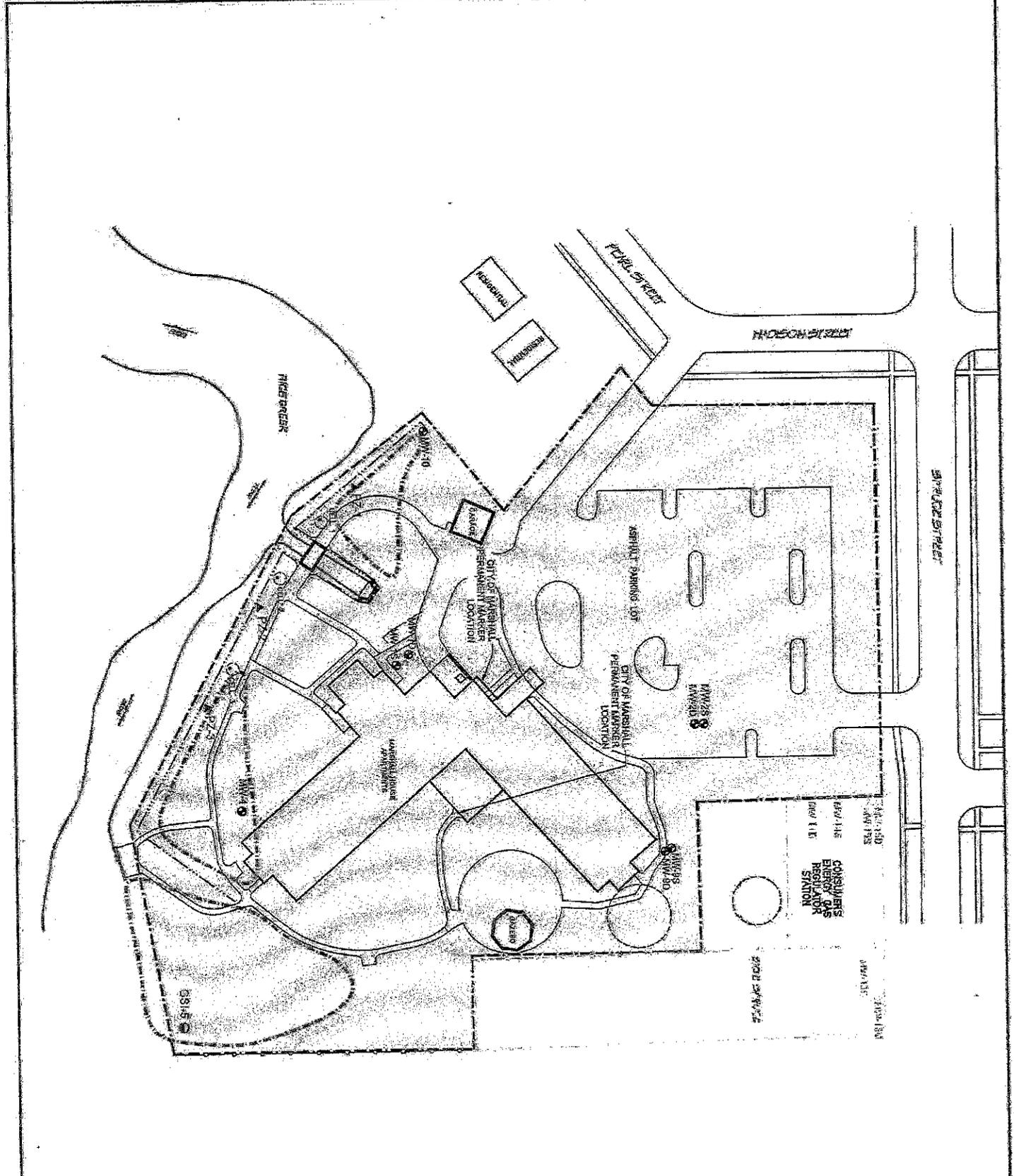
**SURVEY OF THE PROPERTY**



**EXHIBIT 3**

**FIGURES 2a and 3a**





**FORMER MARSHALL MANUFACTURED GAS PLANT**  
**APPROXIMATE EXTENT OF NON-MANUFACTURED GAS PLANT DEBRIS**

**ARCADIS** | **3A**

**LEGEND**

- GROUNDWATER MONITORING WELL
- GAS (GROUNDWATER/GAS/WATER INTERFACES) GROUNDWATER MONITORING WELL
- IN-GROUND GROUNDWATER TREATMENT CELL
- CITY OF MARSHALL PROPERTY BOUNDARY
- SHEET FILE BARRIER
- FENCE LINE

**NOTE:**  
 THE RESTRICTIONS LISTED IN THE RC APPLY TO THE SHADE AREAS

**SCALE IN FEET**

0 70 140



**Administrative Report  
December 3, 2013 City Council Meeting**

**REPORT TO:** Honorable Mayor and Council Members

**FROM:** Tom Tarkiewicz, City Manager

**SUBJECT:** Battle Creek Unlimited Services Agreement

**BACKGROUND:** In 1999, the City entered into a services agreement with Battle Creek Unlimited. The services include:

- Retention, attraction, land acquisition, brownfield and LDFA coordination for the City.
- Administration and coordination of significant commercial and/or industrial projects
- Responding to requests for information and reports from the City Manager regarding economic development and marketing.
- Assisting industrial and/or commercial development prospects through the planning and zoning process including, but not limited to, making them aware of deadlines and meetings of the Planning Commission and Zoning Board of Appeals and attending site plan review meetings and other meetings related to a development agreement with the prospect(s) and/or the prospects' development project(s).
- Collecting, organizing and disseminating information and reports to the City Manager and the Marshall City Council regarding marketing and economic development matters.
- Undertaking such other economic development, property acquisition, land sale, or other matters requested from time to time by the City Manager and as are acceptable to BCU.
- Representation and information to the City on economic development, property acquisition and land sale matters, including but not limited to such matters as:
  - Legislative matters and input involving economic development or marketing activities.
  - Developments at the county level involving economic development and /or marketing activities including, but not limited to, such issues as casinos, brownfield development, etc.
  - Marketing and economic development matters related to and conducted in association with the Michigan Economic Development Corporation.
  - Workforce development issues.
- Marketing/promotion of the City for economic development purposes including, but not limited to:
  - Updating brochures both on economic development and on Marshall in general.
  - Coordination and detailed preparation of both community and city visits for prospects for economic development purposes.

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Marshall, MI 49068

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cityofmarshall.com

- o Development and drafting of a mutually acceptable marketing and economic development strategy of the promotion of communities along the I-94 corridor in Calhoun County.

The initial agreement expired on June 30, 2008 and was renewed in March of 2010. In FY 2008, 2009 and 2010, the annual fee paid was \$153,558.12. The proposed annual fees are \$161,500 in FY 2010, \$165,000 in FY 2011 and \$168,500 in FY 2012.

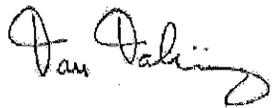
MAEDA has taken over these responsibilities for economic development and the above services. A new agreement is attached. The MAEDA Board has approved the agreement.

**RECOMMENDATION:** It is recommended that the City Council approve the Services Agreement with Battle Creek Unlimited & MAEDA and authorize the Clerk to sign the agreement.

**FISCAL EFFECTS:** If BCU services are needed, MAEDA budget will pay for the services from BCU.

**ALTERNATIVES:** As suggested by Council

Respectfully submitted,



Tom Tarkiewicz  
City Manager

**AGREEMENT FOR CONSULTING, MARKETING  
AND DEVELOPMENT SERVICES**

THIS AGREEMENT entered into as of \_\_\_\_\_ by and between the CITY OF MARSHALL, a Michigan municipal corporation, whose address is 323 West Michigan Avenue, Marshall, Michigan 49068 (the "CITY"), The MARSHALL AREA ECONOMIC DEVELOPMENT ALLIANCE, a Michigan non-profit corporation of 323 W. Michigan Avenue, Marshall, Michigan 49068 ("MAEDA") and BATTLE CREEK UNLIMITED, INC. a Michigan not-for-profit corporation, whose address is 4950 West Dickman Road, PO Box 1438, Battle Creek, Michigan 49016 ("BCU").

WHEREAS, the CITY is the owner of a certified industrial park, has a Local Development Finance Authority (LDFA), is engaged in brownfield development and other commercial and industrial development as well as other marketing and development ventures; and

WHEREAS, the CITY and BCU have previously worked together pursuant to written agreements for consulting, marketing and development services; and

WHEREAS, MAEDA now has responsibility for the CITY's Local Development Finance Authority and the CITY's Downtown Development Authority (DDA); and WHEREAS, BCU provides Tax Increment Finance Authority (TIFA) and Downtown Development Authority coordination, land acquisition and retention advice with regard to commercial and industrial projects, provides advice on brownfield issues, legislative issues, workforce development issues and issues relating to the Michigan Economic Development Corporation, and provides marketing and promotional services, and

WHEREAS, the MAEDA is desirous of retaining the services of BCU to provide the services set forth herein for MAEDA on an "as needed" basis; and

WHEREAS, BCU has represented to the CITY and to MAEDA that it is not currently in any negotiations with or in the process of preparing or making any offers to industries located within the City of Marshall to expand or relocate to the City of Battle Creek or elsewhere; and

WHEREAS, BCU is desirous of providing said service to MAEDA as needed; and

WHEREAS, BCU and MAEDA desire that this Agreement supersedes and replaces all prior agreements between the CITY and BCU.

NOW THEREFORE, in consideration of the Agreement contained herein and other good and valuable consideration, the mutual receipt and legal sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Services Provided. BCU agrees to provide to MAEDA and MAEDA agrees to purchase from BCU certain marketing and development services, with acknowledgement that BCU reserves the right to not perform requested services if it determines that delivering said services would not be in the best interest of BCU for reasons including, but not limited to: BCU has inadequate capacity of staff or resources to fulfill service requested, a potential conflict of interest may exist for BCU or the economic interests of the City of Battle Creek, or other reasons BCU determines that completing the work may be detrimental to BCU, the economic interests of the City of Battle Creek or the City of Marshall. The marketing and development services are described as follows:

a. Representation and information to MAEDA on economic development, property acquisition and land sale matters, including but not limited to such matters as:

(1) Legislative matters and input involving economic development or marketing activities.

(2) Developments at the county level involving economic development and /or marketing activities including, but not limited to, such issues as casinos, brownfield development, etc.

(3) Marketing and economic development matters related to and conducted in association with the Michigan Economic Development Corporation.

(4) Workforce development issues.

b. Marketing/promotion of MAEDA for economic development purposes including, but not limited to:

(1) Updating brochures both on economic development and on Marshall in general.

(2) Assistance with coordination and detailed preparation of both community and MAEDA visits for prospects for economic development purposes.

(3) Development and drafting of a mutually acceptable marketing and economic development strategy of the promotion of communities along the 1-94 corridor in Calhoun County.

c. Sub-paragraph 1 a. and 1 b. above are considered the normal services BCU shall provide to MAEDA under this Agreement. Such normal services may include additional assistance as MAEDA may request from time to time.

2. Costs/Fees. For the term of this Agreement, MAEDA will pay to BCU as follows:

a. MAEDA shall pay for all BCU personnel costs, costs for equipment and materials, all travel and entertainment costs, as well as BCU extension costs and all other miscellaneous costs and expenses related to BCU's duties under this Agreement.

b. In the event that MAEDA requests that BCU provide the services of its CEO, senior staff, or other support staff, BCU shall bill MAEDA for the same at the rate of: \$200/hour for the CEO, \$125/hour for senior staff, and \$75/hour for other support staff. Such bills shall describe the services provided, the name of the provider, and the time spent (in minimum increments of 15 minutes) and shall be issued monthly.

c. MAEDA shall pay the same within thirty days. In instances where a meeting or other project work is, as reasonably determined by BCU, mutually and comparably beneficial to the City's and the City of Battle Creek's economic development efforts, such hours would not be billed to MAEDA.

3. Periodic Review and Objections. The President and CEO of BCU and the Mayor of the City and the CEO of MAEDA shall meet at least annually during the term of this Agreement and any extension or renewal of this Agreement for the purpose of reviewing the services provided under this Agreement, the status of consulting, marketing and economic development services provided by BCU under the terms of this Agreement.

4. Term of Agreement. This Agreement shall commence on the first day of November 2013 and shall continue for a period of 24 calendar months thereafter, unless earlier terminated pursuant to this Agreement.

5. Mutual Non-Compete Restrictions During Term of Agreement. During the term of this Agreement and any renewal:

a. None of the parties shall initiate contact or negotiations with businesses already existing in the CITY (as to BCU) or the City of Battle Creek (as to the CITY and MAEDA) to attempt to entice such business to relocate from the CITY or the City of Battle Creek;

b. Each of the parties shall advise the others in writing if approached by a business already existing in the CITY (as to BCU) or the City of Battle Creek (as to the CITY and MAEDA) about relocating from the CITY or the City of Battle Creek;

c. None of the parties shall initiate contact or negotiations with prospective businesses that have expressed interest in developing a business in the CITY (as to BCU) or in the City of Battle Creek (as to the CITY and MAEDA) if it has knowledge of such expression of interest as a result of the services and relationship under this Agreement;

d. Subject to the requirements of confidentiality that may be imposed upon them by prospective businesses and operating in good faith in any event, each party shall, to the fullest extent possible in light of such requirements, advise the other in writing if approached by a

prospective business that has already expressed interest in locating in the CITY (as to BCU) or in the City of Battle Creek (as to CITY and MAEDA).

6. Termination. Either party to this Agreement may terminate this Agreement with or without cause, at any time, upon thirty (30) days notice to the other party.

BCU agrees that for a period of two (2) years after termination or non-renewal of this Agreement it will not make any proposals to, enter into any negotiations or agreement with, or conduct any other marketing activities directed at any commercial or industrial development prospect project for which it has provided any marketing and/or development services under this Agreement, unless said commercial or industrial prospect has first indicated in writing that it is no longer considering the City of Marshall as a location for the project.

7. Legality. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby and such provisions shall be deemed to be reformed to the extent necessary to permit enforcement to the fullest extent legally permissible.

8. Governing Law. The validity and meaning of this Agreement shall be determined in accordance with the laws of the State of Michigan applicable to contracts made and to be performed in Michigan without giving effect to conflicts of laws and provisions.

9. Successors and Assigns. This Agreement, and the covenants, conditions and obligations set forth therein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, administrators, representatives and assigns; provided, however, a party hereto may not assign this Agreement without the prior written consent of the other party.

10. Notices. Any notices, request or payment required to be given by the terms of this Agreement shall be deemed to have been given when the same is sent by First Class Mail addressed to the appropriate party as set forth below or at such other address as they may designate to the other party in writing.

If to the City of Marshall:

City of Marshall  
323 W. Michigan Avenue  
Marshall, MI 49068

Attn: Marshall City Manager or MAEDA:

City of Marshall  
323 W. Michigan Avenue  
Marshall, MI 49068  
Attn: MAEDA CEO

With copies to:

City of Marshall  
323 W. Michigan Avenue  
Marshall, MI 49068  
Attn: City Attorney

If to BCU:

Battle Creek Unlimited  
PO Box 1438  
4950 W. Dickman Road  
Battle Creek, MI 49016  
Attn: President & CEO

11. Counter-Parts. This Agreement may be executed in two or more counter-parts, each of which shall be an original, but all of which shall constitute one and the same instrument.

12. Captions and Pronouns. The headings of the numbered sections contained herein are for convenience only and do not limit, define or construe the contents of such sections. Whenever a personal pronoun is used in the neuter or in the masculine and/or feminine gender, it shall be deemed to include masculine and feminine unless the context indicates otherwise.

13. TIME IS OF THE ESSENCE FOR ALL PURPOSES IN THIS AGREEMENT.

14. Entire Agreement. This Agreement shall constitute the entire Agreement, understanding and representations of BCU and MAEDA and the City with respect to the subject matter contained herein.

15. Modification. No modification or amendments to this Agreement shall be valid unless in writing and signed by their duly authorized representatives of BCU and the CITY and MAEDA.

16. Limitation of Liability. It is possible that BCU would be joined as a defendant in a lawsuit or other action filed against MAEDA or the CITY in connection with BCU's services or matters that BCU is working on for the benefit of the CITY and MAEDA, and BCU, CITY and MAEDA desire to allocate such risk to MAEDA and the CITY. Accordingly, MAEDA and CITY agree that they will pay all costs of defending BCU in any such action and all costs of settlement or satisfaction of any judgment. BCU will remain liable for its errors and omissions, gross negligence and intentional misconduct, but in no event shall BCU be liable to MAEDA, CITY or any other person for incidental or consequential damages or damages in excess of the amount of fees paid by MAEDA for BCU's services.

IN WITNESS WHEREOF, the parties listed below have caused this Agreement to be executed by their duly authorized officers on the dates set forth below, effective as of November 1, 2013.

**BATTLE CREEK UNLIMITED**

By: \_\_\_\_\_  
(printed) \_\_\_\_\_

Its: \_\_\_\_\_  
Executed on \_\_\_\_\_, 2013

**CITY OF MARSHALL**

By: \_\_\_\_\_  
(printed) \_\_\_\_\_

Its: \_\_\_\_\_  
Executed on \_\_\_\_\_, 2013

**MAEDA**

By: \_\_\_\_\_  
(printed) \_\_\_\_\_

Its: \_\_\_\_\_  
Executed on \_\_\_\_\_, 2013



**ADMINISTRATIVE REPORT**  
**December 3, 2013 – City Council Meeting**

**REPORT TO:** Honorable Mayor and Council Members  
**FROM:** Tom Tarkiewicz, City Manager  
**SUBJECT:** Downtown Development Authority–Main Street Board Re-Appointments

**BACKGROUND:** The Downtown Development Authority (DDA) was established under Public Act 197 of 1975. By this Act, the Board consists of 13 members, 12 of which are appointed by the City Manager subject to the approval of City Council. The thirteenth member is the City Manager. The oversight of the Michigan Main Street Program was given to the DDA Board.

Barb Keith and Mark Stuart have requested to be reappointed. Their terms expire on December 31, 2013.

**RECOMMENDATION:** It is recommended that Barb Keith and Mark Stuart be reappointed to a term expiring on December 31, 2017.

**FISCAL EFFECTS:** None

**ALTERNATIVES:** As suggested by Council.

Respectfully submitted,

Tom Tarkiewicz  
City Manager

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Marshall, MI 49068

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