

CALL TO ORDER

IN REGULAR SESSION Monday, May 17, 2010 at 7:00 P.M. in Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order by Mayor Smith.

ROLL CALL

Roll was called:

Present: Council Members: Dyer, Metzger, Miller, Mayor Smith, Traver and Williams.

Also Present: City Manager Tarkiewicz

Absent: Council Members: Doane

Moved Miller, supported Williams, to excuse Council Member Doane. On a voice vote: **MOTION CARRIED.**

INVOCATION/PLEDGE OF ALLEGIANCE

Scott Loughrige of Cross Roads Church & Ministries gave the invocation and Mayor Smith led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Moved Dyer, supported Miller, to add the Michigan South Central Power Agency invoice to the Consent Agenda for a new bill total of \$825,905.42 and add Executive Session as agenda item 15A for the purpose of discussing collective bargaining. On a voice vote: **MOTION CARRIED.**

PRESENTATIONS AND RECOGNITION

Michael Jaconette, candidate for Probate Court Judge, introduced himself to the citizens of Marshall and explained why he is running for office.

INFORMATIONAL ITEMS

Mayor Smith explained he hopes to have a list compiled of interested people to serve on a committee to examine parking issues with the hospital expanding at a future Council meeting. He also announced that he will not be running for Mayor again in November.

PUBLIC COMMENT ON AGENDA ITEMS

Tracy Trudell of 1212 Comstock encouraged Council to consider all of the issues presented when voting for the Pratt Park PUD rezoning.

Matt Hodulik of 1409 O'Keefe outlined his perspective of the Pratt Park rezoning issue.

John LaPietra of 386 Boyer Court asked for clarification on the location of the vacant lot in item 11B.

PUBLIC HEARINGS AND SUBSEQUENT COUNCIL ACTION

A. Fiscal Year 2011 Budget Adoption:

Mayor Smith opened the public hearing to hear comment regarding the adoption of the FY 2011 budget.

John LaPietra of 386 Boyer Court asked Council to provide a review of the process leading up to the final document.

Hearing no further comment, the hearing was closed.

Moved Dyer, supported Miller, to adopt Budget Amendment #3 which approves a \$7,500 transfer from the Airport Fund to the General Fund for the loan repayment. On a roll call vote – ayes: Dyer, Metzger, Miller, Mayor Smith, Traver, and Williams, nays: none: **MOTION CARRIED.**

CITY OF MARSHALL, MICHIGAN
RESOLUTION #2010-10

City of Marshall Authorizing Resolution
To Amend FY 2011 Proposed Budget

Budget Amendment 3

Increase the General Fund Revenue Budget by \$7,500 for the Airport Fund Transfer Loan Repayment

WHEREAS, the City agreed to provide a FY 2010 transfer loan from the General Fund to the Airport Fund at the May 17, 2010 Regular Council meeting for the purpose of providing increased funding to the Airport Fund to purchase 90 octane fuel at the end of FY 2010;

WHEREAS, the FY 2011 Proposed Budget does not include the related budget considerations for the repayment transaction;

THEREFORE, BE IT RESOLVED, that the General Fund revenue line item 101-000-699.00 Transfers from Other Funds be increased by \$7,500, the Airport Fund expenditure line item 295-895-999.00 Transfers to Other Funds be increased by \$7,500 and the Airport Fund expenditure line item 295-895-757.00 Fuels and Lubricants be reduced by \$7,500 for the Airport Fund repayment of the transfer loan to the General Fund.

As Amended, May 17, 2010

Sandra Bird, Clerk-Treasurer

I, Sandra Bird, being duly sworn as the Clerk-Treasurer for the City of Marshall, hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on May 17, 2010 and that said meeting was conducted and that the minutes of said meeting were kept and will be or have been made available.

Sandra Bird, Clerk-Treasurer

Moved Williams, supported Miller, to adopt the FY 2011 budget resolution with amendments #1, #2 and #3, setting forth the budgets and the proposed tax levy to support the municipal operations for the same time frame.

Moved Williams, supported Dyer, to amend the motion to remove Budget Amendment #2 and reduce the Recreation millage by .1228 and decrease the Recreation Revenue budget by \$18,000. On a roll call vote – ayes: Mayor Smith and Williams; nays: Metzger, Miller, Traver, and Dyer: **MOTION DEFEATED.**

Council discussion ensued.

The Clerk restated the original motion: **Moved** Williams, supported Miller, to adopt the FY 2011 budget resolution with amendments #1, #2 and #3, setting forth the budgets and the proposed tax levy to support the municipal operations for the same time frame. On a roll call vote – ayes: Miller, Mayor Smith, Traver, Dyer and Metzger; nays: Williams: **MOTION CARRIED.**

CITY OF MARSHALL, MICHIGAN
RESOLUTION #2010-11

THE CITY OF MARSHALL
GENERAL APPROPRIATION ACT AND TAX LEVY RESOLUTION
July 1, 2010 – June 30, 2011

THE CITY OF MARSHALL RESOLVES that the expenditures for the fiscal year, commencing July 1, 2010, and ending June 30, 2011, are hereby appropriated on a departmental and fund total basis as follows:

<u>GENERAL FUND REVENUES</u>	
Taxes	\$3,353,897
Licenses and Permits	48,613
Intergovernmental Revenues	682,626

Charges for Services	72,600
Fines and Forfeits	23,300
Interest	78,031
Miscellaneous	110,580
Other Financing Sources	<u>1,043,886</u>
Total Revenues	\$5,413,533

GENERAL FUND EXPENDITURES

City Council	\$5,488
City Manager	98,249
Assessor	114,423
Attorney	70,000
Human Resources	57,997
Clerk-Treasurer	298,786
Town Hall	98,803
Chapel	2,850
Other City Property	42,450
Cemetery	171,659
Non-Departmental	816,888
Police	1,345,699
Crossing Guards	36,638
Dispatch	225,000
Fire	802,903
Inspection	101,128
Planning/Zoning	76,400
Streets	672,484
Engineering	23,188
PSB Operations	128,375
Community Development	34,611
Parks	55,610
Capital Improvements	<u>165,820</u>
Total Expenditures	\$5,445,449

Fund balance reserves shall be decreased by (-\$31,916) based on the FY 2011 revenues and expenditures for the General Fund budget.

The City Council does hereby levy a tax of 15.4629 mills, for the period of July 1, 2010, through June 30, 2011, on all real and personal taxable property in the City of Marshall, according to the valuation of the same. This tax is levied for the purpose of defraying the general expense and liability of the City of Marshall and is levied pursuant to Section 8.01, Article 8 of the Charter of the City of Marshall.

The City Council does hereby levy a tax of .4840 mills for the period of July 1, 2010, through June 30, 2011, on all real and personal taxable property in the City of Marshall, according to the valuation of the same. This tax is levied to operate the Dial-A-Ride

Transportation System in the City of Marshall as authorized by a vote of the citizens on August 5, 1975.

The City Council does hereby levy a tax of .9393 mills for the period of July 1, 2010, through June 30, 2011, on all real and personal taxable property in the City of Marshall, according to the valuation of the same. This tax is levied for the purpose of defraying the expense of operating the Recreation Department of the City of Marshall as authorized by a vote of the citizens on April 4, 1959.

The City Council does hereby levy a tax of 1.6129 mills for the period of July 1, 2010, through June 30, 2011, on all real and personal taxable property in the City of Marshall, according to the valuation of the same in a district known as the Downtown Development District. This tax is levied for the purpose of defraying the cost of the Downtown Development Authority.

	<u>PROPOSED</u> <u>FY 2011</u>	<u>ACTUAL</u> <u>FY 2010</u>	<u>DIFFERENCE</u>
General Operating	15.4629	15.4629	0.0000
Recreation	.9393	.8165	0.1228
Dial-A-Ride	.4840	.4840	0.0000
Downtown Development Authority	<u>1.6129</u>	<u>1.6129</u>	<u>0.0000</u>
 TOTAL	 18.4991	 18.3763	 0.1228

The City Manager is authorized to make budgetary transfers within the appropriation centers established through this budget, and that all transfers between appropriations may be made by the City Manager in an amount not to exceed \$10,000 per year without prior Council approval pursuant to Section 19.2 of the provisions of the Michigan Uniform Accounting and Budgeting Act.

The City Council establishes the budget for the period of July 1, 2010, through June 30, 2011 for the following funds in the amounts set forth below:

<u>ALL FUNDS REVENUES</u>	
General Fund	\$5,413,533
MVH-Major & Trunkline	409,936
MVH-Local	281,405
Recreation	403,130
Composting	52,290
Airport	130,643

Local Development Finance	514,925
Downtown Development	292,531
Special Projects	12,650
Marshall House	609,500
Electric	12,426,300
Dial-a-Ride	349,288
Wastewater	1,245,800
Water	1,364,100
Data Processing	124,867
Motorpool	606,432
Safety	338
Total Revenues	\$24,237,668

ALL FUNDS EXPENDITURES

General Fund	\$5,445,449
MVH-Major & Trunkline	408,707
MVH-Local	298,124
Recreation	448,550
Composting	59,331
Airport	130,827
Local Development Finance	409,516
Downtown Development	292,531
Special Projects	41,706
Marshall House	623,844
Electric	13,229,112
Dial-a-Ride	404,053
Wastewater	1,819,910
Water	1,820,071
Data Processing	172,604
Motorpool	900,142
Safety	6,876
Total Expenditures	\$26,511,353

Fund balance reserves shall be decreased by (-\$2,273,685) based on the FY 2011 revenues and expenditures for All Funds.

Budget Amendment 1 – Active and Retiree Health Insurance Cost Increase

Increase the General Fund, Recreation Fund, Compost Fund, Airport Fund, Downtown Development Fund, Marshall House Fund, Electric Fund, DART Fund, Wastewater Fund, Data Processing Fund, Motor Pool Fund and Safety Fund Expenditure Budgets by \$192,216.80 to Provide Additional Funding for the Projected Increase in Health Care Costs, with a Revenue Source of Fund Balance Reserves

Budget Amendment 2 – Increase Recreation Fund Millage Rate to Maximum Allowable

Increase the Recreation Fund Millage Rate by 0.1228 to the Maximum Allowable Rate (Headlee Capped) and Increase the Recreation Revenue Budget by \$18,000 for the Additional Revenue Generated from the Proposed Additional Rate Increase.

Budget Amendment 3 – Repayment of Airport Fund Transfer Loan to General Fund

1) Increase the funding for the Airport Fund budget expenditure line item 295-895-999.00 Transfers to Other Funds in the amount of \$7,500 for the repayment of the transfer loan to the General Fund. The source of funding is to reduce the Airport Fund expenditure line item 295-895-757.00 Fuels and Lubricants by \$7,500. The net effect is a zero increase/decrease to the Airport Fund expenditure budget.

2) Increase the General Fund revenue line item 101-000-699.00 Transfers from Other Funds by \$7,500.

The City Council of the City of Marshall did give notice of the time and place when a public hearing on adoption of the budget would be held in accordance with Public Act 43 of 1963, proof of publication of the Notice of Public Hearing is now on file, and which Public Hearing was duly held pursuant to said notice and in conformity therewith. A copy of the budget proposal was on file with the Clerk-Treasurer and available for public inspection for at least one week prior to adoption of the budget; and

Further, the City Council of the City of Marshall did give notice of the time and place when a public hearing would be held in conformity with the provisions of Public Act 5 of 1982 authorizing a tax rate in excess of the present authorized tax rate for General Operating, Recreation, Dial-A-Ride and Downtown Development Authority tax levies, proof of publication of Notice of Public Hearing is now on file, and which Public Hearing was duly held pursuant to said notice and in conformity therewith; and

This Resolution shall take effect July 1, 2010.

Dated: 05/17/10

Sandra Bird, Clerk-Treasurer

I, Sandra Bird, being duly sworn as the Clerk-Treasurer for the City of Marshall, hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on May 17, 2010 and that said meeting was conducted and that the minutes of said meeting were kept and will be or have been made available.

Sandra Bird, Clerk-Treasurer

OLD BUSINESS

A. Pratt Park PUD Rezoning and Development Agreement:

Moved Dyer, supported Metzger, to approve the rezoning of 31.4 acres of Pratt Park to PUD and adopt the ordinance. On a roll call vote – ayes: Mayor Smith, Traver, Williams, Dyer, Metzger and Miller; nays: none: **MOTION CARRIED.**

Moved Dyer, supported Miller, to approve the 2nd Restated and Amended Development Agreement subject to final approval from the City Attorney. On a roll call vote – ayes: Traver, Williams, Dyer, Metzger, Miller and Mayor Smith; nays: none: **MOTION CARRIED.**

SECOND RESTATED AND AMENDED
DEVELOPMENT AGREEMENT

This Agreement, made this _____ day of May, 2010, by and between the City of Marshall, a Michigan municipal corporation with its principal address at 323 West Michigan Avenue, Marshall, Michigan 49068 (hereinafter "City"), and Allman Partners I, LLC, a Michigan limited liability company, and Pratt Park I, LLC, a Michigan limited liability company, both with a principal address of 303 Capital Avenue, S.W., Battle Creek, Michigan 49015, (sometimes hereinafter referred to jointly as "Proprietor") is as follows:

WHEREAS, the City previously approved a proposal for a development project by Allman Partners I, LLC which includes the development the property described on Exhibit A hereto (hereinafter the 'Development'); and,

WHEREAS, Allman Partners I, LLC has constructed substantial portions of the Development as originally proposed and approved; and

WHEREAS, Pratt Park I, LLC proposes to revise various remaining phases of the Development to construct, among other features 56 rental apartment units in a revised Phase II; and

WHEREAS, the City approved ; and

WHEREAS, on April 14, 2010 the City's Planning Commission recommended approval of an overall site plan for the Developer's five phase project; and

WHEREAS, Developer shall not proceed without the City's future approval of revised phases 3, 4 and 5; and

WHEREAS, the City and Proprietor desire to address matters of mutual interest regarding the Development; and

WHEREAS, the City desires to insure that all customary municipal improvements required by pertinent City ordinances and regulations for any segment of roadway and/or the Development are properly completed according to specifications of the City, and are compatible and consistent with other similar improvements in other parts of the City; and,

WHEREAS, the City and Proprietor desire, prior to the approval of any plan for any phase of the Development, and prior to the continuation of any construction related to any phase of the Development to establish their respective rights and responsibilities so as to allow a smooth and orderly completion of the Development,

NOW, THEREFORE, the parties hereto agree as follows:

1. Preparation and Submission of Detailed Plans. Proprietor shall have prepared and sealed by a registered professional engineer two (2) nonreproducible copies of detailed construction plans for the construction of each phase of the Development, together with plans for all Public improvements to be undertaken as part of each phase of the Development (hereinafter the "Plans"). The Public Improvements shall include the Principal Public Street as defined below, including any traffic islands; all public storm water improvements, public water and sewer improvements and public sidewalks as defined in this Agreement. The Plans shall also show the location of all lighting, signs, electric, telephone and other utilities, water mains, sewer mains, storm sewers, fire hydrants and lines, a neighborhood park, sidewalks and pedestrian walkways, public rights-of-ways and easements. No work on any phase of the Development shall be commenced until the Plans for that phase of the Development have been given final approval by the City. Proprietor upon completion of the Public Improvements shall have prepared and transmitted to the City one (.1) mylar reproducible copy, two (2) nonreproducible copies and a digital file in a format as later described in this Agreement, of detailed as-built plans.

2. Private Roadways. Proprietor has proposed that certain roadway's within the Development (not including the Principal Public Street) not be dedicated as public streets and that they remain private and part of the common elements as set forth in the Master Deed to be recorded by Proprietor pursuant to this Agreement (the "Private Roadways"). All Private Roadways shall be shown as such on the plans and marked on the Plans as Private Roadways and shall not be part of the Public Improvements and Proprietor and its assigns shall be responsible for all maintenance and repairs, including plowing, salting, and snow removal related to the Private Roadways. Proprietor agrees that none of the Private Roadways shown on the plans shall ever be entitled to be dedicated as Public Streets.

3. Grading, Storm Sewers, Retention Areas, Soil Erosion, and Sedimentation Control. Proprietor shall, at its sole cost and expense, contract for the installation, as part of the Public improvements of all grading, storm sewers, soil erosion and sedimentation control improvements required for completion of the Public Improvements within the Development, and shall install all private storm water improvements required due to the construction of private improvements within the Development. Proprietor, at its sole cost and expense, shall contract for the installation of all storm sewers necessary to connect the storm sewers within the Development to the City's existing storm sewer system or to private storm water retention areas where the City's storm sewer system is not available for Proprietor's use. All public storm water improvements and private storm water improvements shall be installed using materials which comply with City specifications and shall be installed in a manner consistent with construction plans approved by the City. All private retention areas and storm water improvements installed or utilized as part of the Development shall be designed so as to be of sufficient size and function so as to accommodate an estimated runoff from the Development (as well as any estimated runoff from pre-existing uses of said retention areas or storm water improvements) from a 100 year storm event for a 24 hour period of time. Proprietor shall be entitled to connect the storm water improvements (both public and private) to the storm water retention area(s) as shown on the Plans via open trench until such time as each individual segment of roadway adjacent to the section of the open trench is completed at which time the storm water improvements shall be completed as shown on the approved Plans. All storm-water improvements (including the enclosed storm sewer from the Principal Public Street to the Private Storm Water Retention Area as shown on the Plans) shall be completed as shown on the approved Plans no later than the Principal Public Street Completion Date. Proprietor shall be responsible for assuring that the existing storm water detention area immediately east of the Principal Public Street upon acceptance of any storm water from the public or private improvements to be installed by Proprietor is properly designed and constructed so as to comply with the size and function requirements of this paragraph.

4. Water and Sanitary Sewer Mains and Lines. Proprietor shall contract for the installation of such water mains and sanitary sewer mains as shall be necessary to connect the Development with the City's existing water distribution and sanitary sewer systems (hereinafter the "Public Water and Sewer improvements"). The Public Water and Sewer Improvements shall include a sanitary sewer main extension and water main extension from existing sanitary sewer and water mains as approved by the City. The location of all Public Water and Sewer Improvements shall be shown on the Plans. All necessary water lines and sanitary sewer lines within the Development, or as shall be necessary to connect the Development to the City's existing water and sanitary sewer mains shall be installed at the sole cost and expense of the Proprietor. All water lines and sewer lines installed by Proprietor shall comply with City specifications and shall be installed in a manner consistent with construction plans approved by the City.

5. Public Sidewalks Within Development. Proprietor shall install Public Sidewalks, sixty (60) inches in width, within the public right-of-way, along each side of the Principal Public Street within the Development as provided for in the Plans, approved by the City. The installation of the Public Sidewalks shall be at the sole cost and expense of the Proprietor and shall be subject to the review and approval of the City, prior to installation. Proprietor shall not be required to install Public Sidewalks on the easterly side of the Principal Public Street beginning at the northeast side of proposed Grove Court to Centennial Road.

6. Repair of Improvements, Security. Proprietor shall repair at his sole cost and expense for a period of two (2) years, all defects in the Public Improvements required to be installed by Proprietor pursuant to this Agreement which are to be transferred and/or dedicated to the City pursuant to paragraph 15 below. The two (2) years in which Proprietor shall be responsible for the repair of said Public Improvements shall begin from the date of the acceptance of the particular phase of the Public improvements by the City. In order to provide assurance to the City that prompt repair of said defects will be made, Proprietor shall deposit with the City Clerk cash, certified check, or irrevocable bank letter of credit (in form set forth in paragraph 8 below), in the amount of ten (10%) percent of Proprietor's engineer's estimate of the total cost of that particular phase of the Public Improvements to be transferred or dedicated to the City prior to the acceptance by the City of any of the Public Improvements within the Development. The City shall be provided with a copy of the Proprietor's engineer's estimate of the total cost of the Public improvements itemized by type and cost of improvement. The deposit required by this section shall be subject to review and approval by City and shall be released in phases, as the development progresses by the City, two (2) years after the date of acceptance of the Public Improvements by the City for each particular phase if Proprietor has complied with the requirements of this Agreement related to the installation and repair of the Public Improvements to be transferred or dedicated to the City. The requirement, in the alternative, may be satisfied by Proprietor supplying to the City a repair bond in favor of the City in an amount equal to deposit required by this paragraph. Any repair bond shall be subject to review and approval by the City.

7. Security for Payment of Public Improvement Costs; Security. Proprietor shall, prior to the issuance of any building permit for any structure within any phase of the Development, deposit with the City Clerk, as security for payment of the costs of all Public Improvements required by this Agreement, in cash, certified check, or irrevocable bank letter of credit (as provided for in paragraph 8 below), an amount equal to the Proprietors engineer's estimate of the cost of said Public Improvements for that phase of the Development, together with the estimate cost of completion of the Principal Public Street. The Proprietor shall provide the City with a copy of Proprietors engineers estimate of the cost of said improvements itemized by type of improvement in that particular phase of the Development and cost. The amount of deposit required by this section shall be subject to review and approval by City. The City shall not unreasonably withhold approval. The letter of credit shall be valid for a period of two (2) years from the

date of the issuance of the first building permit for any structure within the Development for a particular phase and shall provide that it may not be cancelled without at least sixty (60) days notice to the City. The City, at its sole option may require issuance of a new letter of credit prior to the expiration of the existing letter of credit if all of the approved Public Improvements have not been completed and approved by the City. This requirement, in the alternative, may be satisfied by Proprietor supplying to the City a surety performance bond, in favor of the City in form and substance acceptable to the City, which bond at all times shall be in an amount at least equal to the estimated cost of completing the Public Improvements for any phase of the Development for which construction has begun, together with the estimated cost of completing the Principal Public Street. Said security performance bond shall not be subject to cancellation at any time in which any construction has commenced on any of the Public Improvements for any phase of the Development and/or at any time prior to completion of the construction of the Principal Public Street, whichever shall occur later.

8. Letters of Credit: Approval. Any irrevocable bank letter of credit provided for in this Agreement shall be drawn upon a financial institution which shall be acceptable to the City. The purpose of said letters of credit shall be to assure that the Proprietor will promptly remit to the City, or such third parties as may be appropriate, such sums as shall be required to complete its obligations under this Agreement. The letters of credit shall provide that the irrevocable letter of credit is available against the City's draft at site accompanied by a certification purportedly signed by an employee or official appearing on the City of Marshall's stationery as follows:

"The City of Marshall is entitled to draw on said letter of credit on behalf of applicant, Allman Partners I., LLC., as payment is due to it under the terms of an Agreement dated February 23, 2004 between Allman Partners I, LLC. and the City of Marshall;"

-or-

"The City of -Marshall is entitled to draw on said letter of credit as it has not received a replacement letter of credit or a renewal of the existing letter of credit acceptable to it within sixty (60) days from the current expiree date."

As required in paragraph 6 above, the letters of credit shall also provide that they will expire two (2) years after the date of their issue provided that the bank shall have given written notice to the City of Marshall by certified mail, return receipt requested, at least sixty (60) days prior to such date that the Letter of credit shall expire sixty (60) days from the date of the notice. No dispute regarding the timeliness, quality, completion, or other aspects of the underlying construction undertaken by any construction contractor shall in any way limit the City of Marshall's right to exercise the letter of credit, nor shall any such dispute provide any defense to the City's rights hereunder.

9. Certificate of Occupancy. No permanent certificate of occupancy shall be issued for any building within the Development until such time as the City has determined that it has accepted all of the Public Improvements which are necessary to service that building. The City may issue temporary certificates of occupancy as permitted by the building code, provided, however, Proprietor shall comply with the requirements of paragraphs 10 and 11 prior to issuance of any temporary certificate of occupancy.

10. Insurance. Proprietor, prior to the issuance of any temporary certificate of occupancy, shall obtain and maintain public liability and property damage insurance in the minimum amount of One Million and 00/100 (\$1,000,000.00) Dollars against any and all claims for damages and injury based upon construction and/or use of the Public Roadways within the Development or other Public Improvements within the project. Said insurance shall be maintained by Proprietor until the date on which the roadways or other Public Improvements required be constructed and maintained by the Proprietor under this Agreement are accepted by the City. The certificate of insurance issued for this insurance policy shall provide that the City is an additional insured and that said insurance may not be canceled without at least thirty (30) days' written notice to the City.

11. Maintenance of Roadways; Snow and Ice Removal. To the extent that a certificate of occupancy is issued for any building within the Development prior to the date on which the Public Improvements required by this Agreement have been accepted by the City, Proprietor shall provide, at its sole cost and expense, maintenance for the roadways within the Development, including, but not limited to, such snow and ice removal as shall be required to make said roadways reasonably safe and convenient for public travel, In the event that Proprietor defaults in this obligation, the City shall be entitled to conduct said maintenance and charge the cost of said maintenance to Proprietor.

12. Installation of Oversized Water Sanitary Sewer and Storm Sewer Lines. City may direct Proprietor to install oversized water lines, sanitary sewer lines, and/or storm sewer lines (collectively the "Utility Improvements"). In the event that the City directs Proprietor to install oversized water lines, sanitary sewer lines, and/or storm sewer lines, the City shall pay to the Proprietor, upon installation, the actual incremental increase in cost incurred by Proprietor in purchasing the material for the oversized water, sanitary sewer, and/or storm sewer lines. The actual incremental increase in cost shall be determined by calculating the cost of the materials for the oversized lines and deducting there from the cost of materials for the installation of Proprietors lines as provided for in the approved Plans. Proprietor shall provide documentation acceptable to the City in order to quantify said increased costs prior to installation of the oversized lines. The City shall make any direction permitted by this paragraph on or before the date of final approval of the Plans for the phase of the Development in which the Utility Improvements are to be installed.

13. Electric, Telephone, Other Communication Systems, and Utilities. Proprietor, at its sole cost and expense, shall contract for the installation of all electric, telephone and other communication systems and other utilities within the Development. All electric, telephone, and other communication systems and other utilities shall be installed underground consistent with the Plans and in accordance with the requirements of the applicable utility companies. Proprietor shall use all available City utilities including City water, sewer and electric service within the Development.

14. Street Lighting. Proprietor, at its sole cost and expense, shall purchase all materials from the City necessary for the City installation of any street lighting that is installed as part of the Public Improvements to be maintained by the City. The location of all street lighting and the type, quality and style of materials and fixtures to be used for said street lighting, shall be subject to review and reasonable approval by City.

15. Condominium, Dedication of Rights-of-Way, Grant of Easements. Proprietor shall dedicate and/or grant to the City, upon the earlier of acceptance of the Public Improvements by the City or approval of the condominium plan, all rights-of-way and easements necessary for construction and maintenance of all Public Improvements as shown on the Plans and for emergency vehicle access as approved by the City, including, but not limited to, a sixty-six (66) foot right-of-way of the Principal Public Street and a sixty (60) foot right-of-way for each of the other public streets within the Development and easements for all other Public Improvements.

16. Standard and Customary Permit and Hook-Up or Connection Fees. Proprietor shall also pay to the City the City's usual and customary fees for standard permits such as water and sewer hook-up and connection fees, building permit fees, together with all other routine types of fees and charges of the City effective as of the date that the City issues the Permit for the inspections, hookups, connections, and other matters for which the fees and charges are applicable. Proprietor shall promptly remit to City the usual and customary fees for standard permits, inspections, hookups or connections made within the Development. In the event that Proprietor shall make changes to the location, type or design of any primary or secondary electric service or any water or wastewater lines after obtaining site plan approval, said changes in location, type and/or design shall be at the sole cost and expense of Proprietor. All such changes shall be subject to review and approval of City.

17. Preconstruction Meeting. Proprietor and City shall, prior to the commencement of construction on any phase of the Development and prior to construction of the Principal Public Street, hold a preconstruction meeting at the offices of the City or at such other location as may be agreed to by the parties, so as to review the details of construction and any issues surrounding compliance with this Agreement. It shall be the goal of the preconstruction meeting to attempt to facilitate a smooth and orderly completion of the Development consistent with the terms of this Agreement and the Plans.

18. Owners Association; Maintenance of Private Roadways, Landscaped Traffic Islands and Medians Maintenance of Storm Sewer Inlets, Storm Water Detention Basin(s) and Facilities; Maintenance of Common Open Space Areas, Neighborhood Park and Pedestrian Walkways; Facilities and Detention Basin(s); Connection to City Storm Water System. Pursuant to the terms of the Condominium Act, Proprietor shall create an Owners' Association composed of all owners of condominium units within the Development ('Owners Association'), Membership in the Owners' Association shall be required and covenants and restrictions shall be recorded as part of the master deed requiring the owners of property in the Development to maintain and repair all storm sewer inlets not located within the public roadway rights of way, storm water detention basin(s) and facilities not located within public roadway rights of way and care for and maintain the common open space areas, neighborhood park and pedestrian walkways; all Private Roadways and all medians and traffic islands in the Development. Proprietor shall, within the master deed, provide for the care and landscaping of the common open space areas, neighborhood park; pedestrian walkways, Private Roadways and the medians and traffic islands and the maintenance and repair of all storm sewer inlets, storm water detention basin(s) and facilities not located within public roadway rights of way in the Development by the members of the Owners' Association, the Proprietor or its assigns or successors. The master deed shall provide that in the event the Owners' Association does not maintain common open space areas, neighborhood park and pedestrian walkways, Private Roadways, the landscaped medians and traffic islands and/or maintain and repair all storm sewer inlets, storm water detention basin(s) and facilities not located within public roadway rights of way to the satisfaction of the City, that the City may conduct said maintenance and/or repair and charge to the individual owners within the Development the cost thereof. The master deed shall provide that in the event the members of the Owners' Association do not make payment of the costs billed to them by City, the City shall be entitled to place a lien on all real property within the Development, place the costs so incurred upon the next City tax roll and collect said lien in the same manner as real property taxes are collected.

19. Acceptance of Improvements by City. To the extent not already complete and accepted, upon compliance with the terms and conditions of this Agreement, and inspection and approval of the Public Improvements by City, City agrees to accept transfer of the Public Improvements to it, accept the rights-of-way or easements dedicated or granted to the City as shown on the Plans, and also to accept the dedication of the Public Roadways within the Development, including the rights-of-way thereof as public streets.

20. Removal of Brush Discarded Building Materials and Rubbish. Proprietor shall remove from the Development all discarded brush, building materials, and rubbish. No brush, discarded building materials, and/or rubbish may be disposed, of by burning. Discarded building materials and rubbish shall be removed from the Development at least once each month during the construction of improvements and buildings and

within one (1) month after completion or abandonment of construction within the Development.

21. Digital File Format For As Built Plans. The digital files of as built plans required by paragraph I above shall be provided in the following format:

- a. AutoCAD version 2002 or later (preferred)
- b. Files shall be in DWG or DXF formats
- c. Key thematic features shall be stored on unique CAD layers (i.e., Storm sewers, Sanitary sewers, water distribution system, roads, natural drainage, etc. each on separate layers)
- d. All drawings shall contain adequate geodetic reference to "real world" coordinates per one of three options:
 - i. A drawing element will reference a section corner/quarter-corner with distance and bearing data relating this point to the site plan.
 - ii. Two drawing elements will be identified with "real world" coordinates established by conventional field survey techniques (i.e. GPS or total station).
 - iii.. Geographic coordinates shall appear in the drawing as text of a readable size and shall be in either Michigan State plane NAD83 system or geographic coordinates of sufficient resolution to derive state-plane feet within 1/10 of a foot.
- e. Drawing units shall be in feet.
- f. File transfer media shall be in CD ROM format.

23. Buffer and Open Space Areas. Except as may be approved by the Marshall Planning Commission along the west line of the revised "Phase II" of the development, Proprietor shall not grade or cut vegetation within the common open space areas within twenty (20) feet of the perimeter of the Development (the "Buffer Area"). Notwithstanding this prohibition, Developer may remove dead vegetation and grade and trim as necessary to provide for the installation of utility service to the development. It is the intent of this paragraph to preserve existing vegetation for the common open space at the edges of the development in its natural state so as to provide screening to properties adjacent to the Development. Upon written approval by the City, Proprietor may remove prohibited species of trees (as defined by the City Code) from the Buffer Area but must replace the prohibited species of trees removed with other trees pursuant to a written plan approved by the City.

24. Construction of Unit. Prior to December 31, 2010 Developer shall complete construction of the Condominium Unit at 1148 Woodruff Drive to the point that it complies with the International Property Maintenance Code section 303, "Exterior of Structure" (copy attached) as adopted by the City.

25. Regulatory and/or Enforcement Rights of the City. Nothing in this Agreement shall be deemed to in any way restrict or limit any right to take any action or enforce any rule or regulation regarding the installation of underground facilities or tie construction of the Development or to regulate the proposed Development which the City, may have pursuant to State law, City ordinance, and/or regulation.

26. Hold Harmless. Proprietor agrees to defend, indemnify, and save harmless the City, its officials, employees and agents from all, liability claims, demands, judgments, and expenses to persons or property occasioned wholly or in part by acts or omissions of Proprietor or its agents, employees, or contractors undertaken as a result of this Agreement, except for any claims, demands, judgments and expenses which are caused by the gross negligence of the City its officials, employees and agents.

27. No Third-Party Rights. It is agreed and understood between the City and the Proprietor that this Agreement is made solely for the benefit of the City and the Proprietor, and that it is not made for the benefit of any third party and that no action or defense may be founded upon this Agreement except by the parties' signatory hereto except that Proprietors' covenants contained herein shall be binding on Proprietors' successors and assigns and the City shall be entitled to enforce said covenants in the same manner is if it were Proprietor against which enforcement is sought.

28. 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 male, female, or neuter gender, it shall be deemed to include masculine and feminine, unless the context indicates otherwise.

29. Complete Contract. This Contract contains the entire Agreement between the parties related to the transactions contemplated hereby and all prior or contemporaneous agreements, undertakings, representations, and statements, oral or written, are merged herein.

30. Drafting. This Agreement has been drafted after extensive negotiations between all parties and shall not be interpreted against, or in favor of, any party based solely upon the participation of such party's legal counsel in the formulation of the language and terms used herein.

31. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the internal laws of the State of Michigan.

Signatures, etc.

B. Delinquent Utilities at 450 Leggitt:

Moved Williams, supported Traver, to support the staff's recommendation to place the

lien on the tax bill for 450 Leggitt. On a roll call vote – ayes: Williams, Dyer, Metzger, Miller, Mayor Smith, and Traver; nays: none: **MOTION CARRIED.**

REPORTS AND RECOMMENDATIONS

A. Home Occupation – 424 Monroe Street:

Moved Miller, supported Williams, to approve the Special Land Use permit #SLU10.01 to allow a home-based Beauty Salon to operate at 424 Monroe as submitted. On a roll call vote – ayes: Dyer, Metzger, Miller, Mayor Smith, Traver and Williams; nays: none: **MOTION CARRIED.**

B. Letter of Interest in purchase of High Street vacant lot:

Council gave direction to staff on how to proceed with the sale of the vacant lot on High Street. Staff will advertise with an ad in the paper and a sign on the lot for letters of interest for a period up to 60 days and then those interested parties will be contacted regarding the bid procedure. Once bids are received they will come to Council for final approval.

C. Adopt-a-Park Program:

Moved Miller, supported Metzger, to approve the attached Adopt-a-Park rules and regulation and allow City Staff and the Parks and Recreation Advisory Board to administer the program. On a voice vote – **MOTION CARRIED.**

D. Annual Compensation of Administrative Officials, Department Heads and Salaried Personnel:

Moved Dyer, supported Williams to approve the annual compensation of administrative officials, department heads and salaried personnel as submitted. On a roll call vote – ayes: Metzger, Miller, Mayor Smith, Traver, Williams and Dyer; nays: none: **MOTION CARRIED.**

E. Airport Board Request for FY 2010 Transfer Loan from General Fund:

Moved Dyer, supported Metzger, to approve a transfer loan from the General Fund to the Airport Fund in the amount of \$7,500, to be repaid by July 31, 2010. On a roll call vote – ayes: Miller, Mayor Smith, Traver, Williams, Dyer and Metzger; nays: none: **MOTION CARRIED.**

APPOINTMENTS / ELECTIONS

A. Library Board Appointments:

Moved Dyer, supported Williams, to approve the Mayor's recommendation to appoint John Thompson to the Library Board with a term expiring March 31, 2013. On a voice

vote – **MOTION CARRIED.**

CONSENT AGENDA

Moved Williams, supported Dyer, to approve the consent agenda as presented.

- A. Approve the installation of banners on Hamilton Street, Eagle Street and Michigan Avenue for the Mayfaire event;
- B. Approve HR Policy #10.1 – Life Insurance;
- C. Approve HR Policy #10.2 – Family Continuation Rider;
- D. Approve the request to use Public Surplus Inc. to dispose of surplus equipment based on staff's guidelines and setting the reserve prices of \$500 each for the two buses, \$3,500 each for the two Crown Victorias, and \$2,500 for the pickup truck;
- E. Minutes of the City Council Work Session and Regular Session held on Monday, May 3, 2010;
- F. Approve city bills in the amount of \$825,905.42.

On a roll call vote – ayes: Mayor Smith, Traver, Williams, Dyer, Metzger, and Miller; nays: none. **MOTION CARRIED.**

PUBLIC COMMENT ON NON-AGENDA ITEMS

John LaPietra of 386 Boyer Court gave a reminder of the upcoming filing dates for the City Council.

COUNCIL AND MANAGER COMMUNICATIONS

Manager Tarkiewicz gave a reminder for the upcoming Spring Trash pickup on Monday, May 24, 2010.

CLOSED SESSION

Moved Dyer, supported Williams, to enter into executive session under Section 8 of the Michigan Open Meetings Act, to discuss collective bargaining at the request of the City Manager. On a roll call vote – ayes: Traver, Williams, Dyer, Metzger, Miller and Mayor Smith; nays: none. **MOTION CARRIED.**

At 9:58 p.m. moved to conference room for closed session.

At 10:13 p.m. returned to open session.

ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Marshall City Council, Regular Session
Monday, May 17, 2010

Bruce R. Smith, Mayor

Sandra Bird, Clerk-Treasurer