

CITY COUNCIL
WORK SESSION AGENDA
Monday, March 21, 2011
6:00 PM – 6:45 PM

A. Consolidated Solid Waste Collection

B. Future Work Sessions

Possible Topics:

Hospital-Neighborhood Committee Report
FY 2012 Budget
Strategic Vision and Plan
Historic District Ordinance
Other topics

C. Other Items



MARSHALL CITY COUNCIL AGENDA

MONDAY – 7:00 p.m.

MARCH 21, 2011

HISTORIC MARSHALL

MAYOR: James Dyer

COUNCIL MEMBERS:
Ward 1 – Wayne Boston
Ward 2 – Nick Metzger
Ward 3 – Brent Williams
Ward 4 – Ryan Traver
Ward 5 – Jody Marikerian
At-Large – Kathy Miller

- 1) CALL TO ORDER
- 2) ROLL CALL
- 3) INVOCATION – Dennis Croy, Marshall Wesleyan 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. Alcohol Awareness Month – Proclamation
City Council will consider a request to recognize April as Alcohol Awareness Month.
 - B. Lions Club White Cane Sale
City Council will consider the request from the Marshall Lions Club to hold their Annual White Cane Sales on Friday, April 29 and Saturday, April 30.
 - C. City Council Minutes
Regular Session.....Monday, March 7, 2011
 - D. City Bills

Regular Purchases.....	\$169,825.47
Purchase Power.....	\$551,264.13
Weekly Purchases – 3/4/11.....	\$ 75,630.78
Weekly Purchases – 3/11/11.....	\$7,906.07
Total.....	\$804,626.45
- 8) PRESENTATIONS AND RECOGNITIONS
 - A. Eagle Scout Candidate – Mihai Radulescu
- 9) INFORMATIONAL ITEMS
 - A. Broadstripe Cable Franchise Fees Compliance Audit Report
 - B. Events
 1. Marshall Music Faire – April 30, 2011 (rain date May 1, 2011)
 2. Marshall Area Farm Market – Saturdays May 14, 2011 – October 29, 2011
 3. Hospitality Classic – May 21, 2011
 4. Memorial Day Parade – May 30, 2011
 5. Cruise to the Fountain – July 2, 2011
 6. Independence Day Chicken BBQ – July 4, 2011
 7. Blues Fest – July 16, 2011
 8. Veteran's Day Ceremony – November 11, 2011
 9. 47th Annual Marshall Christmas Parade – November 28, 2011

MAYOR: James Dyer

COUNCIL MEMBERS:
Ward 1 - Wayne Boston
Ward 2 - Nick Metzger
Ward 3 - Brent Williams
Ward 4 - Ryan Traver
Ward 5 - Jody Markarian
At-Large - Kathy Miller

10) PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION

11) OLD BUSINESS

A. Proposed Changes to Chapter 152: Sign Ordinance

City Council will consider the recommendation from Planning Commission that after consideration of the proposed revisions, City Council give approval to the proposed changes to Chapter 152: Sign Ordinance.

B. Sale of High Street Vacant Lot

City Council will consider the recommendation to accept the bid from Oaklawn Hospital for \$63,000 for the High Street vacant lot and direct the City Attorney to prepare all pertinent sales documents.

12) REPORTS AND RECOMMENDATIONS

A. Spring Trash Pick up

City Council will consider the recommendation to approve the use of general fund reserves for the use of the 2011 spring trash pick up.

B. AMP Power Supply Agreement: 2015-2020

City Council will consider the recommendation to adopt the resolution to authorize the Clerk Treasurer to sign the Rescinding 2010-A Long Term AMGS Replacement Energy Purchase Power Schedule and Supplement with AMP for 2,500 kW of energy.

13) APPOINTMENTS / ELECTIONS

A. Liaison to the Planning Commission

The Mayor will appoint a liaison to the Planning Commission.

B. Zoning Board of Appeals

City council will consider the Mayor's recommendation to reappoint David Ryan and Dave DeGraw to the Zoning Board of Appeals for three-year terms expiring on March 10, 2014.

C. Local Advisory Council

City Council will consider the Mayor's recommendation to reappoint Mary Lu Cartey, Mary Ann Churchill, and Carl Gibson to the Local Advisory Council.

D. District Library Board Vacancy

City Council will announce how to apply for the vacant seat on the District Library Board.

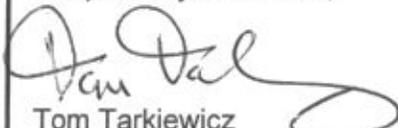
14) PUBLIC COMMENT ON NON-AGENDA ITEMS

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

PROCLAMATION – APRIL IS ALCOHOL AWARENESS MONTH

WHEREAS, research continues to demonstrate alcohol use by young people poses dangers associated with acute impairment, threats to long-term brain development and overall safety and well-being, and

WHEREAS, 2010 Michigan Profile for Healthy Youth data for Calhoun County shows:

- 35.5% of 7th graders, 58% of 9th graders, and 71.8% of 11th graders report alcohol as “sort of easy” or “very easy” to get
- Calhoun County’s 7th grade students report their first use of alcohol occurred at age 10
- 21.5% of 11th graders engaged in dangerous binge drinking, defined as having five or more drinks of alcohol in a row within a few hours

WHEREAS, it is illegal to give or allow underage youth to drink alcohol in your home, even with their parents’ permission, and

WHEREAS, anyone found guilty of providing alcohol to underage youth can face up to a \$1,000 fine and sixty days in jail, in addition to any civil action resulting from damages or injury related to the offense, and

WHEREAS, nationally the 2009 Youth Risk Behavior Survey shows:

- 28.3% of students rode in a car or other vehicle driven by someone who had been drinking alcohol one or more times during the 30 days before the survey.
- 9.7% of students had driven a car or other vehicle one or more times when they had been drinking alcohol during the 30 days before the survey.

WHEREAS, alcohol abuse is linked to as many as two-thirds of all sexual assaults and date rapes of teens and college students and is a major factor in unprotected sex among youth, increasing their risk for unplanned pregnancy and sexually transmitted infections; and

WHEREAS, youth that consume alcohol before the age of 15 are 40% more likely to develop alcohol dependence as adults. However, if consumption of alcohol can be delayed until the legal age of 21, serious alcohol-related problems can be reduced by 70%.

WHEREAS, the Substance Abuse Council and the Marshall City Council ask residents to refuse to provide alcoholic beverages to underage youth and take necessary action to prevent this illegal and unhealthy practice,

NOW, THEREFORE, be it resolved that the Marshall City Council not only discourages the use of alcohol by those below the legal age of consumption but also exhorts all residents of Marshall to refuse to provide alcoholic beverages to those underage youth, and will continue to take necessary action to prevent this illegal and unhealthy activity. The Marshall City Council calls upon all citizens, parents, youth, governmental agencies, public and private institutions, businesses and workplaces, hospitals, and schools in Marshall to support efforts that reduce and prevent underage drinking in our community.

IN WITNESS WHEREOF, I, James L. Dyer, Mayor of the City of Marshall, have hereunto set by hand and affixed the Seal of the City of Marshall, Michigan, on this 21th day of March, 2011.

Mayor James L. Dyer
City of Marshall

WE SERVE
MARSHALL LIONS CLUB
CHARTERED AUG. 20, 1953

MARCH 10 2011

City Manager
City Hall
323 West Michigan Avenue
Marshall, MI 49068

To Whom It May Concern:

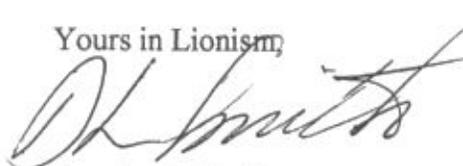
I have been appointed chairperson of White Cane Week for the Marshall Lions Club.

The Lions of Michigan have proclaimed *APRIL 19th* through *MAY 13th* OF the year as White Cane Weeks. The Lions of Marshall are planning to hold their White Cane Sale on Friday, *APRIL 29th* and Saturday, *APRIL 30th* *2011*. It is my understanding that no other organizations have scheduled a similar event for the above dates.

We are requesting the City of Marshall grant us permission to hold our sale on those dates.

If you have any questions or comments please call me, Doug at 781-3945 or you may call Lion President *CHRIS CRAFT 781-8268*

Yours in Lionism,



Douglas L. Smith

Chairperson's Address: Doug Smith
336 Lyon Lake Rd
Marshall, MI 49068

CALL TO ORDER

IN REGULAR SESSION Monday, March 7, 2011 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 Dyer.

ROLL CALL

Roll was called:

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

Also Present: City Manager Tarkiewicz.

Absent: None.

INVOCATION/PLEDGE OF ALLEGIANCE

Mayor Dyer led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Moved Miller, supported Metzger, to approve the agenda with the removal of item 12A – Set Public Hearing for Electric, Water, and Sewer Rate Ordinance Amendment. On a voice vote: **MOTION CARRIED.**

PUBLIC COMMENT ON AGENDA ITEMS

John LaPietra of 386 Boyer Court spoke of his questions he submitted to City Staff.

CONSENT AGENDA

Moved Williams, supported Mankerian, to approve the consent agenda:

- A. Approve minutes of the City Council Work Session and Regular Session held on Tuesday, February 22, 2011;
- B. Approve city bills in the amount of \$1,936,163.17.

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

PRESENTATIONS AND RECOGNITIONS

None.

INFORMATIONAL ITEMS

Chief Schwartz discussed the Proposed Agreement for Non-Motorized for Hire Vehicles.

PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION

None.

OLD BUSINESS

None.

REPORTS AND RECOMMENDATIONS

A. Wastewater Project Planning - Award:

Moved Williams, supported Mankerian, to accept the proposal from Stantec Consulting Michigan Inc. for the 2012 wastewater improvements project planning for the not to exceed cost of \$15,000 and approve the resolution stating intent to reimburse expenditures from the SRF loan, S2 Grant proceeds, or bond proceeds for the improvement to the wastewater collection and treatment facilities. On a roll call vote – ayes: Mayor Dyer, Mankerian, Metzger, Miller, Traver, Williams, and Booton; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL, MICHIGAN
RESOLUTION #2011-07**

**RESOLUTION STATING INTENT TO
REIMBURSE EXPENDITURES FROM BOND PROCEEDS FOR
IMPROVEMENT TO THE WASTEWATER AND WATER COLLECTION,
DISTRIBUTION AND TREATMENT FACILITIES**

A RESOLUTION TO PROVIDE FOR:

Statement of Intent to reimburse expenditures from bond proceeds required by Internal Revenue Code for tax-exempt debt.

WHEREAS, the City of Marshall, County of Calhoun, State of Michigan (the "City") is developing a plan to improve various equipment and infrastructure at the wastewater treatment plant and the wastewater collection system (the "Project"); and

WHEREAS, the City may receive a loan to finance costs of the Project from the State Revolving Fund through the Michigan Department of Natural Resources and Environment or a limited tax obligation bond to finance the Project.

WHEREAS, the Internal Revenue Service has issued Treasury Regulation § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended, governing proceeds of debt used for reimbursement, pursuant to which the City must declare official intent to reimburse expenditures with proceeds of such debt before making the expenditures.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City hereby makes the following declaration of official intent for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

(1) As of the date of this resolution the City reasonably expects to reimburse itself for the expenditures described in (2) below with proceeds of debt to be incurred by the City.

(2) The expenditures described in this paragraph (2) are to pay certain costs associated with the Project which were or will be paid subsequent to sixty (60) days prior to the date hereof or which will be paid prior to the issuance of the debt from the general funds or capital fund of the City.

(3) As of the date hereof, the maximum principal amount of debt expected to be issued for reimbursement purposes, including reimbursement of debt issuance costs, Two Million One Hundred Thousand Dollars (\$2,100,000) which debt may be issued in one or more series and/or together with debt for other purposes.

(4) A reimbursement allocation of the expenditures described in paragraph (2) above with the proceeds of the borrowing described herein will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the Project are placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the debt to be issued for the Project to reimburse the City for a capital expenditure made pursuant to this Resolution.

(5) The expenditures for the Project are "capital expenditures" as defined in Treas. Reg. § 1.150-1(b), which are any costs of a type which are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of "placed in service" under Treas. Reg. § 1.150-2(c)) under general Federal income tax principles (as determined at the time the expenditure is paid).

(6) No proceeds of the borrowing paid to the City in reimbursement pursuant to this Resolution will be used in a manner described in Treas. Reg. § 1.150-2(h) with respect to abusive uses of such proceeds, including, but not limited to, using funds corresponding to the proceeds of the borrowing in a manner that results in the creation of replacement proceeds (within Treas. Reg. § 1.148-1) within one year of the reimbursement allocation described in paragraph (4) above.

2. This declaration is executed to indicate the intent of the City only, and does **NOT** bind the City to acquire and construct any improvements or to issue any bonds or other obligations of the City.

3. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are hereby rescinded.

Sandra Bird, Clerk-Treasurer

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the City Council of the City of Marshall, County of Calhoun, State of Michigan, at a Regular meeting held on March 7, 2011 at 7:00 o'clock p.m., prevailing Eastern Time, 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 as required by said Act 267.

Sandra Bird, Clerk-Treasurer

APPOINTMENTS / ELECTIONS

None.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Dennis Orr, owner of H & R Block, stated his concern with parking in the parking structure.

Marshall City Council, Regular Session
Monday, March 7, 2011
Unofficial

John LaPietra of 386 Boyer Court informed Council of his intention to withdraw his membership from the Hospital Neighborhood Committee.

COUNCIL AND MANAGER COMMUNICATIONS

None.

ADJOURNMENT

The meeting was adjourned at 7:30 p.m.

James L. Dyer, Mayor

Sandra Bird, Clerk-Treasurer

VENDOR APPROVAL SUMMARY REPORT

Date: 03/17/2011
 Time: 11:24am
 Page: 1

CITY OF MARSHALL

Vendor Name	Vendor Number	Description	Check Amount	Hand Check Amount
4IMPRINT	400174	BLINKING BALLS	596.72	0.00
A & D LIGHTING SUPPLY	7002	FLUORESCENT LIGHTING	163.74	0.00
AIRGAS GREAT LAKES	4982	CYLINDER RENTAL	68.82	0.00
ALBION ELECTRIC INC	400176	BLOWER #4 CONTROLS	334.11	0.00
APPLIED IMAGING	2538	RICOH CONTRACT & USAGE	226.91	0.00
ARROW UNIFORM	6839	CUSST #010198-01	572.66	0.00
AUTO GLASS SOLUTIONS, LLC	6595	M-2 WINDSHIELD REPAIR	350.00	0.00
AUTO VALUE MARSHALL	21340	OIL, GEAR LUBE, DEXIII-H/MER	635.83	0.00
BEARDSLEE LAW OFFICES	3471	WEND-TREE	5,055.75	0.00
BLU FISH CONSULTING, LLC	4473	MARSHALL MAINSTREET BUS CARDS	35.00	0.00
BOBCAT OF LANSING	5868	#362 MIRROR HEAD	97.95	0.00
BONNIE'S TAILORING	2257	ALTERATIONS	12.00	0.00
BSN SPORTS	7145	Baseball/Softball Equipment	1,752.75	0.00
BUDGET DRAIN CLEANING	7148	MARSHALL HOUSE	615.00	0.00
C & R FIRE EQUIPMENT SALES	400118	ALUMINUM ESCAPE CYLINDERS	1,092.92	0.00
CALHOUN COUNTY CONS DISPATCH	7176	2ND QUARTER 2011	55,476.50	0.00
CARL COMMUNICATIONS	4393	POLICE DEPT CHANGES	784.00	0.00
CARLETON EQUIPMENT COMPANY	7189	CANCEL #1-16658 (POWERPLAN)	0.00	0.00
COURTNEY & ASSOCIATES	7259	FEBRUARY	250.00	0.00
CRYSTAL FLASH ENERGY	6176	PROPANE	1,422.78	0.00
D & D MAINTENANCE SUPPLY	7271	JANITORIAL SUPPLIES	97.90	0.00
DADOW POWER EQUIPMENT	7277	#325B AIR CLEANER ELEMENT	45.96	0.00
DARLING ACE HARDWARE	7281	HOOK, WALLPLATE, PATCH, PAINT	280.25	0.00
ED'S DECORATING	9873	PAINTING	2,950.00	0.00
EJUSTICE SOLUTIONS LLC	300114	RMS - APRIL	1,000.00	0.00
FASTENAL COMPANY	5789	SNAP-ON JIFFY CLIP	2.96	0.00
FHI ONLINE, INC.	400173	SEAT	79.00	0.00
GORDON FOOD SERVICE INC	8734	MOTHER/SON ACTIVITY NIGHT	320.02	0.00
GRIFFIN PEST SOLUTIONS	6272	900 S MARSHALL	42.00	0.00
HERMANS MARSHALL HARDWARE	7446	SCREW EXTRAQCTOR	89.34	0.00
HUB INTERNATIONAL MIDWEST	4472	POLICY S1805444	46,505.25	0.00
ISAAC & SONS	7484	APT #310	70.00	0.00
J & K PLUMBING SUPPLY	3351	2220 UNION BRASS, TAPE	12.33	0.00
JACKSON TRUCK SERVICE	7495	OVAL LED FLASHING	120.24	0.00
JOHN D BRUNDAGE &	6437	FEBRUARY SERVICES	3,300.00	0.00
K-MART	7501	FEBRUARY CHARGES	83.55	0.00
KAR LABORATORIES INC	8817	ANALYSIS OF SAMPLES	360.00	0.00
KECK CONSULTING SERVICES	8207	DEBIT FOR A/R INVOICE #967	2,448.85	0.00
LAKELAND ASPHALT CORPORATION	7526	COLD PATCH	1,130.49	0.00
LAUTENSLAGER-LIPSEY	7532	RUST REMOVER	250.20	0.00
LEWIS G BENDER, PH.D.	3206	STRATEGIC PLANNING	4,000.00	0.00
LEXISNEXIS RISK DATA MNGMNT	400109	FEBRUARY CHARGE	135.50	0.00
M & K QUALITY TRUCK SALES	6196	2010 GMC TRUCK C4500--DART #13	1,366.13	0.00
MACNLOW ASSOCIATES	7546	JOSH LANKERD-WORKPLCE CONFLICT	735.00	0.00
MARSHALL LUMBERTOWN	7569	SELF DRILL	72.36	0.00
MARSHALL MEDICAL ASSOCIATES	7571	PHYSICALS	440.00	0.00
MARSHALL TIRE	3771	BEAD SEAL & STEM	193.96	0.00
MARSHALL WELDING & FABRICATION	7590	FAB & INSTALL BRACKETS	1,103.00	0.00
MASA	2072	AHD-12SY	1,485.00	0.00
MEDLER ELECTRIC COMPANY	7604	LEV BR20 BRN DPLX RCPT	133.59	0.00
MICHIGAN ASSOCIATION OF	7617	POLICE EXECUTIVE CONTRACT	90.00	0.00
MICHIGAN SOUTH CENTRAL	7614	FEBRUARY - NATURAL GAS	4,220.50	0.00
MISSION CAR WASH	217915	JANUARY CHARGES	84.00	0.00
MWEA	2006	LYNN COOK - MEMBERSHIP DUES	58.00	0.00
NAPA OF MARSHALL	2939	LAMP	7.72	0.00
NORTH CENTRAL LABORATORIES	7727	SLUDGE JUDGE	957.47	0.00
O'LEARY WATER CONDITIONING	6995	WATER	40.50	0.00
OHIO CALLIBRATION LABORATORIES	400175	SERVICE FOR RADAR	104.00	0.00
POWER LINE SUPPLY	7821	RUBBER TESTING	1,917.10	0.00
PVS TECHNOLOGIES	7797	FERRIC CHLORIDE	5,647.45	0.00
QUALITY ENGRAVING SERVICE	7800	NAME PLATES--DYER & BOOTEN	62.00	0.00
RADIO COMMUNICATIONS	7810	LABOR - BAD EXT HD COMMUNICATI	359.84	0.00
RATHCO SAFETY SUPPLY INC	7814	SIGN PARTS	650.00	0.00
SHERWIN-WILLIAMS	2073	CARPETING	7,364.80	0.00
SPARTAN STORES	9656	FEBRUARY CHARGES	365.02	0.00
STANDARD PRINTING & OFFICE	7903	BUSINESS CARD MASTER	923.25	0.00
TRI AIR TESTING INC	8206	AIR ANALYSIS REPORTS	139.00	0.00

VENDOR APPROVAL SUMMARY REPORT

Date: 03/17/2011
 Time: 11:24am
 Page: 2

CITY OF MARSHALL

Vendor Name	Vendor Number	Description	Check Amount	Hand Check Amount
UNIVERSAL ADVERTISING ASSOC	400178	ADVERTISING D.A.R.T.	135.50	0.00
VALIDITY SCREENING SOLUTIONS	21635	CREDIT REPORT	13.00	0.00
WALKER PARKING CONSULTANTS	8003	MARSHALL/OAKLAWN STUDY	6,485.56	0.00
WIL-MAC SALES AND SERVICE	8029	SERVICE CALL-WOMEN'S RESTROOM	1,379.44	0.00
YOU R SPECIAL, LLC	21522	CLEANING @ MH	340.00	0.00
ZICK'S BODY SHOP INC	400177	FLATBED WRECKER SERVICE	85.00	0.00
Grand Total:			169,825.47	0.00

CHECK NUMBER SERIES AS OF FRIDAY, 03/18/11

Beginning # Ending # Dated

PAYROLL-ACH	71171	71174	03/05/11--03/18/11
A/P & P/R-OTHER	86898	87069	03/05/11--03/18/11



MICHIGAN SOUTH CENTRAL POWER AGENCY

720 HERRING ROAD • LITCHFIELD, MICHIGAN 49252
 PHONE (517) 542-2346 • FAX (517) 542-3049
 www.mscca.net

ORIGINAL INVOICE

MARSHALL CITY ELECTRIC DEPARTMENT
 323 WEST MICHIGAN AVENUE
 MARSHALL, MICHIGAN 49068
 Attn: Mr. Tom Tarkiewicz

Invoice Date: 15-Mar-11
 Due Date: 31-Mar-11
 Service From: 01-Feb-11
 To: 28-Feb-11

Peak Demand 17,377 kw
 Total Energy Received 8,877,199 kWh

Area	Entitlement %	Operating and Maintenance Costs	Debt Service	Total
PROJECT 1-ENDICOTT	24.0%	391,861.29	133,825.94	525,687.23
PROJECT 2	18.0%	1,339.14	20,221.73	21,560.87
PROJECT 3	20.2%	822.96	-	822.96
PURCHASED POWER	14.1%	155,192.23		155,192.23
TRANSMISSION	1.5%	(11,972.32)	12,398.54	426.22
MISO	19.7%	6,930.78		6,930.78
SUBSTATION	34.4%	59.86	34,581.83	34,641.68
ADMINISTRATION	19.7%	24,849.81		24,849.81
MEMBER	12.9%	1,122.72		1,122.72
CAPACITY	12.9%	-		-
RATE STABILIZATION		-		-
TOTAL COST	\$	570,206.48	201,028.04	771,234.51
	\$/kWh	0.06423	0.02265	0.08688
CREDITS	\$	(18,942.34)	(201,028.04)	(219,970.38)
	\$/kWh	(0.00213)	(0.02265)	(0.02478)
NET COST	\$	551,264.14	(0.00)	551,264.13
	\$/kWh	0.06210	(0.00000)	0.06210

Pay this amount \$ 551,264.13

Any amounts due and not paid by the due date shall bear interest at the rate of 1% per month until paid.

VENDOR APPROVAL SUMMARY REPORT

Date: 03/04/2011

Time: 11:08am

Page: 1

CITY OF MARSHALL

Vendor Name	Vendor Number	Description	Check Amount	Hand Check Amount
JESSICA ALKIRE	400164	REFUND UTILITY DEPOSIT	48.91	0.00
ALLSTATE WORKPLACE DIVISION	3431	POLICY #ALLMI550	768.77	0.00
MORRIS ARVOY	400157	STARTUP	2,000.00	0.00
BATTLE CREEK UNLIMITED, INC.	4558	MARCH	13,750.00	0.00
BIO-SYSTEMS INTERNATIONAL	400166	BIOBUG GREEN	109.16	0.00
BROADSTRIPE	3293	ACCT #198-040293	173.23	0.00
CALHOUN COUNTY FARM BUREAU	4941	MEMBERSHIP DUES	50.00	0.00
CALHOUN COUNTY TREASURER	7177	2011 DOG LICENSES SOLD	88.00	0.00
CARLETON EQUIPMENT COMPANY	7189	CANCEL #1-16658 (POWERPLAN)	0.00	0.00
CITGO	3724	CITGO FLEET #132271610	13,529.72	0.00
COMMERCIAL OFFICE PRODUCTS	9769	TONER, PENS, STAPLER, CRTRDG	267.43	0.00
CONSUMERS ENERGY	8560	1000 0033 5602	4,799.70	0.00
CORNERSTONE INSPECTION SRVCS	300392	INSPECTION COMMISSION	40.00	0.00
JAMES R DEVENEY	300006	INSPECTION COMMISSION	137.50	0.00
DUECO INC	7317	TRAINING - ANTHONY MERRINGER	375.00	0.00
DARYL GANO	8148	INSPECTOR COMMISSION	411.25	0.00
GRAND TRAVERSE RESORT	7403	A.EGNATUK, A.AMBLER	372.57	0.00
JOHN GROSS	300013	INSPECTOR COMMISSION	507.50	0.00
TRACY HALL	6028	EXPENSE REIMBURSEMENT	7.50	0.00
DOUGLAS HILL	400158	MATT FREDS--ACT. SLUDGE TRNG	300.00	0.00
HUB INTERNATIONAL MIDWEST	4472	POLICY #24895547N	55.00	0.00
REBECCA HUTCHINS	400159	LICENSE REIMBURSEMENT	47.00	0.00
J.O. GALLOUP COMPANY	4624	#2 & #5 ENGINE WATER PUMP	58.46	0.00
TREVOR JASON	400163	REFUND UTILITY DEPOSIT	21.11	0.00
KEENE'S DISCOUNT OUTLET	400160	TV TRUCK CABINETS	1,160.00	0.00
MARSHALL COMMUNITY CU	7558	4570 - FEDDERS	131.02	0.00
MARSHALL MANUFACTURERS ASSOC	7570	MEMBERSHIP DUES	650.00	0.00
MARSHALL PUBLIC SCHOOLS	7574	MARCH IT SERVICES	1,000.00	0.00
NAPA OF MARSHALL	2939	OIL DRY	121.78	0.00
R.A. LAPLAND ASSOC INC	400162	REFUND UTIL DEP & OVERPAYMENT	189.35	0.00
MYRON SCHNEIDER	9460	REFUND UTILITY DEPOSIT	79.41	0.00
SPRINT	9628	ACCT #224843832	375.73	0.00
STATE OF MICHIGAN	4872	38-6004708 SALES TAX, FEB 2011	32,788.77	0.00
SYCCA	400161	TRAINING FOR EQUIPMENT	24.60	0.00
JOHN & CAROLYN THOMAS	400165	REFUND TAX OVERPAYMENT	41.43	0.00
JENNIFER WOOD	400156	STARTUP	1,000.00	0.00
SHERI ZIENERT	5152	COFFEE	65.88	0.00
Grand Total:			75,545.78	0.00

PREScription REIMBURSEMENTS 85.00

TOTAL CASH DISBURSEMENTS \$75,630.78

VENDOR APPROVAL SUMMARY REPORT

Date: 03/11/2011
 Time: 9:32am
 Page: 1

CITY OF MARSHALL

Vendor Name	Vendor Number	Description	Check Amount	Hand Check Amount
AD-VISOR & CHRONICLE	7557	FEBRUARY CHARGES	575.84	0.00
KRIS AMBROSE	21628	EXPENSE REIMBURSEMENT	55.01	0.00
ASONS CONSTRUCTION	400170	REFUND OVERPAYMENT	14.43	0.00
BROADSTRIPE	3293	ACCT #198-040788	1,918.74	0.00
CALHOUN COUNTY TREASURER	7177	FEBRUARY TRAILER FEES	94.00	0.00
CARLETON EQUIPMENT COMPANY	7189	CANCEL #1-16658 (POWERPLAN)	0.00	0.00
COMMERCIAL OFFICE PRODUCTS	9769	BINDERS, CRTDGS, CLIPS, TAPE	469.21	0.00
CRT, INC	6541	SECURITY DEPOSIT FOR BDR SRVC	1,000.00	0.00
CULLIGAN	736	ACCT #1155180	33.50	0.00
SCOTT DUNSFORD	400134	REFUND 2ND OVERPAYMENT	49.04	0.00
GRIFFIN PEST SOLUTIONS	6272	200 E SPRUCE	42.00	0.00
J.O. GALLOUP COMPANY	4624	SOLENOID FOR #1 WELL	503.79	0.00
LOUIE'S BAKERY	7542	SAFETY DAY SNACKS	92.40	0.00
TRISHA NELSON	4471	TRAVEL ADVANCE - CONFERENCE	105.00	0.00
PHILPOTT, ANTHONY	300241	EXPENSE REIMBURSEMENT	40.76	0.00
RENAISSANCE NASHVILLE HOTEL	400169	LODGING FOR AMP CONFERENCE	1,204.38	0.00
REPUBLIC SERVICES #249	2096	ACCT #3-0249-1022021	465.49	0.00
MYRON SCHNEIDER	9460	REFUND UTILITY DEPOSIT	79.41	0.00
JAMES SCHWARTZ	300391	EXPENSE REIMBURSEMENT	21.08	0.00
STATE OF MICHIGAN	300116	COMPOST FACILITY REG FEE	600.00	0.00
PATRICK STILLSON	400168	REFUND UTILITY OVERPAYMENT	335.73	0.00
TOM TARKIEWICZ	6019	EXPENSE REIMBURSEMENT	12.40	0.00
TRENTON TAYLOR	400171	REFUND UTILITY DEPOSIT	64.53	0.00
JAMIE LEE TETER	400172	REFUND UTILITY DEPOSIT	24.93	0.00
LUCAS TICE	300431	SCHOOL LUNCH	12.40	0.00

Grand Total: 7,814.07 0.00

PRESCRIPTION REIMBURSEMENTS 92.00

TOTAL CASH DISBURSEMENTS \$7,906.07

City of Marshall



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To: Tom Tarkiewicz, City Manager
From: Sandra Bird, Clerk-Treasurer
Date: March 2, 2011
Subject: Broadstripe Cable Franchise Fees Compliance Audit Report

Periodically, the City of Marshall should request access to Broadstripe Cable's financial records to review the revenues, franchise fee calculation and remittance of the 5% franchise fees. The Agreement between the City of Marshall and Broadstripe Cable (formerly Millennium Digital Media) was signed in November, 2002. The City has not previously asked to inspect the records since inception of the agreement. The Clerk-Treasurer and Accountant arranged an appointment with Broadstripe to perform a review of their records on March 1, 2011.

The following is some information regarding franchise fees:

Regarding Internet and voice revenues being included in gross revenues for calculating franchise fees, the federal government has determined that VoIP (Voice over Internet Protocol) services are not considered cable services and are therefore not subject to cable franchise fees. 42 USC 542(b) states: "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." Broadstripe's Internet and voice services are both VoIP services; therefore, not cable services and not subject to franchise fees.

Additionally, in a March 15, 2002 Declaratory Ruling in the Matter of Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities, the FCC rules that cable modem service is neither a cable or telecommunication service, but instead an information service. This FCC decision was ultimately affirmed by the US Supreme Court in NCTA v Brand X. (See attached.)

In Michigan, Public Act 480 excludes from the definition of gross revenues "any revenues received by the provider or its affiliates from the provision of services or



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capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionally integrated, with video service." MCL 484.3306(5)(c). Therefore, Broadstripe's VoIP services are not included in the franchise fee computation under both state and federal law.

Some additional items have changed since MI Public Act 480 became law. The Act itself amended existing franchise agreements ".to include only those provisions required under a uniform video service local franchise [UVSLF], MCL 484.3305(5)(2)(b). Subparagraph (3) of the same Section further clarifies this position. Basically, Broadstripe's, formerly Millennium Digital Media, franchise is amended where a UVSLF agreement addresses a matter differently.

With regard to a 2005 - 2010 audit look back, PA 480 provides for a 24-month look-back: "No more than every 24 months, a franchising entity may perform reasonable audits of the video service provider's calculation of the fees paid under..to the franchising entity during the preceding 24-month period only." MCL 484.3307(7)(1).

The payment of fees & cost of an audit is also addressed in PA 480 Section 7. (1) by the following language. "Any additional amount due verified by the franchising entity shall be paid by the provider within 30 days of the franchising entity's submission of an invoice for the sum. If the sum exceeds 5% of the total fees which the audit determines should have been paid for the 24-month period, the provider shall pay the franchising entity's reasonable costs of the audit."

The same Section also addresses the audit location. "All records reasonably necessary for the audits shall be made available by the provider at the location where the records are kept in the ordinary course of business. The franchising entity and the video service provider shall each be responsible for their respective costs of the audit.

OBJECTIVES

The objectives of this audit were to determine that:

- 1) To examine the current franchise agreement and evaluate compliance



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with the terms and conditions.

- 2) To determine the accuracy of franchise fee calculations and vendor remittance paid in a timely manner.
- 3) To evaluate the terms of the agreements for future negotiations.

SCOPE & METHODOLOGY

We conducted procedures for examining the current franchise agreement, determining accuracy of franchise fee calculation and evaluating the current agreement to determine if there are any contract modifications. Our audit period covered a 24-month period, 1/1/09 – 12/13/10.

OVERALL CONCLUSION

We conclude Broadstripe is in compliance with the franchise fee agreements, and owes the City no additional fees for the audit period 1/1/09 – 12/13/10. Broadstripe disclosed (and we also verified) they made an error in their franchise fee calculation during 2009 resulting in an overpayment to the City of approximately \$2,500. They are not requesting the City to refund them.

We do recommend some contract modifications to the franchise agreement with Broadstripe.

OPPORTUNITIES FOR IMPROVEMENT

We identified one potential area for contract modification in the next franchise term, beginning 2017:

- 1) Due to some staffing change issues and payment processing off-location, approximately 50% of the monthly remittance payments were received on a timely basis. Broadstripe is committing to timely payments in the future. It is our recommendation that the next contract include a provision that would allow the City to charge penalty/interest on late payments.

In addition, Broadstripe stated that most franchise fees are paid on a quarterly basis and the State may require this in the near future.

SUMMARY

The City receives approximately \$50,000 per year in cable franchise fees. There appears to be a trending decline in cable services due to the economy and



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competition. It also appears the industry business model is growing for internet and voice services, which are not subject to franchise fees. The City may see declining franchise fee revenue over the next several years. Because the franchise fee is capped at 5% by the Federal government, increasing the franchise fee in the next agreement is not an option. If the Federal and State governments revise the provisions for franchise fees to be computed on the internet and voice services, the City should re-negotiate in the agreement. The 5% franchise fee is charged to Broadstripe customers on their monthly invoice. Therefore, any changes in Franchise fees would be directly passed along down to the customer.

A copy of the Franchise Agreement is attached.

Regards,



Sandra Bird, Clerk-Treasurer
City of Marshall



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ADMINISTRATIVE REPORT November 18, 2002 - CITY COUNCIL MEETING

REPORT TO: Honorable Mayor and City Council

FROM: Tom Tarkiewicz, Director of Utilities and Infrastructure
Maurice S. Evans, City Manager

SUBJECT: Millennium Digital Media Franchise Agreement

BACKGROUND: During 2001, the franchise agreement with Millennium Digital Media (MDM) expired. The Mayor appointed a sub-committee of the Advanced Communication Committee to review the franchise agreement and negotiate with MDM. Also, the City Council approved the use of Alan Enderle of Kreis, Enderle, Callander & Hudgins (KECH) as legal advisor.

The sub-committee consisted of Eric Cook, Paul Beardslee, Kevin Belew, John Byrd and Tom Tarkiewicz. The Committee reviewed the old franchise and brought concerns to KECH. Mr. Enderle drafted a new franchise and presented the document to Rick Clark of MDM. A small group of the sub committee, consisting of Mr. Cook, Mr. Beardslee and Mr. Tarkiewicz met with Mr. Clark and discussed the proposed agreement "line by line" until an agreement between both sides were reached. Mr. Enderle reviewed the final agreement for legal correctness. After many drafts and meetings, the attached Cable Television Franchise Agreement between the City of Marshall and Millennium Digital Media Systems, LLC. is presented for your review and approval.

Some of the highlights of the Franchise Agreement are as follows:

Section 2. Grant of Franchise – Non-Exclusive Franchise: The agreement allows for other providers to enter into a franchise with the City to provide service.

Section 3. Term: The franchise term is 15 years.

Section 4. Franchise Fee: The franchise fee is 5% of gross revenues. This is approximately \$60,000 per year. Payments will be made monthly on actual gross revenues.

Section 5. Cable System and Capacity: MDM will provide emergency alert access to the City Public Safety personnel. The cable system shall be "state of the art".

Section 6. Access Channels, Equipment, Facilities, and Services: MDM will provide two public access channels. A third channel will be available when MDM upgrades their system.

Section 9. Subscriber Information and Policy: MDM will provide a business office which is open at least 50 hours a week with a local or a toll free telephone number. **AGENDA ITEM 9A**



Section 14. Liability and Insurance: Amounts of insurance are discussed.

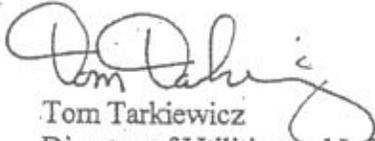
Section 34. Security: Letter of Credits for \$50,000 for security for franchise fee payments and \$40,000 for security for the system removal costs.

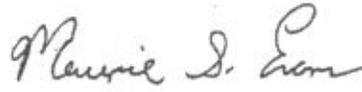
RECOMMENDATION: It is recommended that the City Council approve the Cable Television Franchise Agreement between the City of Marshall and Millennium Digital Media Systems, LLC. and authorize the City Clerk to sign the agreement.

FISCAL EFFECTS: The City receives approximately \$60,000 per year from franchise fees.

ALTERNATIVES: As suggested by the Council.

Respectfully submitted,


Tom Tarkiewicz
Director of Utilities and Infrastructure


Maurice S. Evans
City Manager

CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN

THE CITY OF MARSHALL, MICHIGAN

AND

MILLENNIUM DIGITAL MEDIA SYSTEMS, L.L.C.

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CABLE TELEVISION FRANCHISE AGREEMENT

The City of Marshall, a Michigan municipal corporation ("City"), and Millennium Digital Media Systems, L.L.C., a Delaware limited liability company ("Grantee") enter into this Cable Television Franchise Agreement ("Franchise Agreement") as of November _____, 2002 ("Agreement Date").

RECITALS

1. Grantee owns and operates a Cable System serving the City under an existing franchise.
2. Grantee desires to continue to operate the Cable System and to provide services offered over the Cable System to its customers.
3. The City finds that the renewal of Grantee's franchise on the terms and conditions of this Franchise Agreement will serve the cable-related needs and interests of the City taking into account the costs.
4. Since assuming the current franchise, Grantee has timely paid franchise fees and has substantially complied with all terms of the franchise and City ordinances.

Based on the above understanding and in consideration of the mutual covenants and agreements contained herein, the City and Grantee agree as follows:

AGREEMENT

1. Definitions.

For purposes of this Franchise Agreement, the following definitions shall apply:

- a. "Basic Cable Service" is defined by the FCC as the lowest level of cable service a subscriber can buy. It includes, at a minimum, all over-the-air television broadcast signals carried pursuant to the must-carry requirements of the Communications Act, and any public, educational, or government access channels required by the system's franchise agreement. It may include additional signals chosen by the operator.
- b. "Cable Act" shall mean the 1984 Cable Communications Policy Act of 1984, as amended by the 1992 Cable Competition and Consumer Protection Act of 1992 and the 1996 Telecommunications Act, as amended from time to time.
- c. "Cable Information Service" shall mean two-way digital packet switched service provided over the Cable System using a cable modem and Internet protocol, which includes Internet access, interactive services and content,

information services, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements.

- d. "Cable Programming Service" shall mean a tier including all program channels on the cable system that are not included in Basic Cable Service, but are not separately offered as per-channel or per-program services. There may be one or more tiers of cable programming service.
- e. "Cable Service" shall mean:
 - i. the one-way transmission to subscribers of video programming, or other programming service, and
 - ii. subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- f. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and/or Cable Information Service and which is provided to multiple subscribers within the City.
- g. "City" shall mean the City of Marshall, a Michigan municipal corporation, and includes the duly elected or appointed officers, agents, and employees of the City.
- h. "Facilities" or "Facility" shall mean any distribution or transmission component of the Cable System, including cables, conduits, converters, splice boxes, cabinets, vaults, equipment, surface location markers, appurtenances, and related facilities located by Grantee in the Rights-of-Way.
- i. "FCC" shall mean the Federal Communications Commission.
- j. "Grantee" shall mean Millennium Digital Media Systems, L.L.C., or its lawful successor.
- k. "Gross Revenues" shall mean all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents, or any person or entity in which Grantee has a financial interest, from the providing of Basic Cable, Cable Programming and Premium Cable services over the Cable System in the City.

These shall include without limitation:

i. any revenue received by Grantee or persons affiliated with it, as reasonably determined from time to time by the City, through any means, which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the Franchise Agreement granted herein.

Gross receipts shall not include:

i. the amount of any fee, tax, assessment or charge of any kind imposed by any government authority on the transaction(s) between Grantee and its subscribers;

ii. receipts from the sale of Internet services, until the City collects an equivalent or greater fee from all other providers of Internet access and service in the City and if the FCC or Congress recognizes in the future that receipts from such services are a permissible basis for computation of Franchise fees. In any case, receipts from such services shall not include amounts paid to third party Internet service providers for Cable Information Services and amounts collected for franchise agreement fees and taxes;

iii. any revenues received through cost sharing arrangements for line extension of the Cable System; and

iv. revenues which Grantee or its affiliates pays an affiliate on which Grantee has already paid Franchise Agreement fees.

l. "Laws" shall mean any applicable state, federal, and local laws, ordinances, and regulations.

m. "Non-Cable Services" shall mean those services not defined as Cable Services.

n. "Premium Cable Service" shall mean those single-channel programming tiers provided by the cable operator for which subscribers pay the cable operator an additional fee above the Basic Cable Service charge.

o. "Rights-of-Way" shall mean the space on, above, or below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements within the City's jurisdiction. This term shall not include any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any person.

2. Grant of Franchise - Non-Exclusive Franchise.

The City grants to Grantee a non-exclusive franchise to operate a Cable System within the City. This grant allows Grantee to construct, maintain, extend, and operate its Facilities in, through, and along the Rights-of-Way for the purpose of providing Cable Services and/or Cable Information Services to the City and its inhabitants for the full term of this Franchise Agreement, subject to the terms and conditions of this Franchise Agreement and applicable law. This Franchise Agreement does not constitute a municipal grant of the permit required by Michigan law for access to and the on-going use of the public rights-of-way, easements, and public places by certain providers of telecommunications services. Any permit which is required by Act No. 216 of the Public Acts of 1995, as amended, or other Michigan law, must be obtained separately from the City. Grantee shall not lease, sublease, license, or otherwise allow the physical use of wires, conduit, poles or facilities in the public rights-of-way by a person or entity required to obtain the City's permission or consent to transact a local business in the City, and who lacks the requisite permit, permission, or consent.

In the event that Grantee enters into any franchise, consent or other agreement for cable telecommunications services with a governmental unit in Calhoun County, Michigan that was served by the Grantee on the effective date of this Agreement for the purpose of establishing a Cable System and such franchise consent or other agreement, in its entirety, is deemed by the City to be more-favorable than this Franchise Agreement, the City may deliver written notice to such effect to Grantee. Grantee shall provide the City with a written response to such notice within sixty (60) days indicating the comparative differences between the franchise agreements. After consideration of both agreements on the whole, this Franchise Agreement may, at City Council's option, be amended by the substitution of the entire contents of such other agreement to be effective ninety (90) days after giving such written notice to Grantee. Under the terms of this provision, this Agreement must be substituted in its entirety and can not be amended in part or modified to include individually substituted exhibits, pages, sections, paragraphs or sentences from another franchise agreement. If the City elects to enact such substitution, the term of the substituted Agreement shall be fifteen (15) years from the effective date of the substitution, provided however that if the City elects such option, Grantee shall have the option, in the alternative, to continue operating the Cable System under the terms of this Agreement for the lesser of 1) seven (7) years from the effective date of said substitution or 2) the expiration of this Agreement by its own terms.

In the event that the City enters into a franchise, consent or other agreement with another person to operate a cable system within the City, such other system shall be governed by substantially the same terms and conditions as this Franchise Agreement.

3. Term.

The term of this Franchise Agreement shall be for a period of fifteen (15) years from the effective date, unless sooner terminated as provided in this Franchise Agreement.

4. Franchise Fee.

a. Five Percent (5%) of Gross Revenues.

Grantee shall pay to the City as a franchise fee a sum equal to five percent (5%) of Gross Revenues.

b. Payments.

Franchise fee payments shall be made monthly commencing _____, 2002. Each franchise fee payment shall be based upon the Gross Revenues for a calendar month and shall be made not later than the fifteenth (15th) day of the second (2nd) calendar month after the calendar month for which such fees shall be applicable (e.g. the franchise fees for January shall be payable not later than March 15). Each franchise fee payment shall be accompanied by a certificate from an authorized representative of Grantee verifying the Gross Revenues for the calendar month for which the applicable payment is being made. Any payment not made when due shall bear interest from and after the due date at the rate of 15% per annum. No acceptance of any payment shall be construed as an accord that the payment amount is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Franchise Agreement.

c. Reasonable Access to Records; Audit.

Grantee shall provide the City with reasonable access to Grantee's records documenting the Gross Revenues as defined in this Franchise Agreement. Grantee shall comply with all reasonable requests for information in the performance of any audit. The City, by itself or in combination with other municipalities served by Grantee, may audit Grantee (or any entity affiliated with Grantee) to verify the accuracy of the franchise fees paid the City. All records reasonably necessary for such audit shall be made available by Grantee to the City at a location in the City. Any additional amount due the City shall be limited to the two (2) calendar years preceding the audit and shall be paid within thirty (30) days of the City submitting an invoice for such sum, and if such sum shall exceed three percent (3%) of the total franchise fee which the audit determines should have been paid for any audited period, Grantee shall, forthwith after receiving a record of the audit and demand from the City, pay the amount of the underpayment, plus interest on the underpayment at the rate of fifteen percent (15%) per annum from the date such payment was due, plus the costs of the audit. If Grantee disagrees with the City's determination of the additional amount due, or whether it exceeds three percent (3%), the City's auditor and the Grantee's auditor shall choose a neutral auditor who shall make a final and binding determination. Grantee shall pay the cost of the neutral auditor. The City shall agree to appropriate confidentiality protection for access to confidential or proprietary information to the extent permitted by Laws.

d. Attorney Fees.

In the event that the City shall be required to initiate legal proceedings to collect the franchise fee, or any other amount payable by Grantee to the City, and shall prevail in

whole or in part in said legal proceedings, Grantee shall be obligated for the City's reasonable attorney fees and costs incurred in such proceedings. Such amount shall be paid upon demand after receipt of invoices for such attorney fees and costs.

e. Reduction of Franchise Fee.

If the City shall elect to reduce the amount of the franchise fee, such reduction shall forthwith result in a reduction of fees to subscribers in the same amount.

5. Cable System and Capacity.

a. Cable System.

The parties understand and agree that Grantee shall operate and maintain the Cable System with an activated minimum bandwidth of 550 MHZ utilizing a fiber to the node design or better. Extensions to the Cable System will be constructed so that there are no more than an average of ten (10) amplifiers in cascade. Fiber optic receiver nodes located throughout the plant will divide the distribution of cable signals to an average of 2500 homes per fiber node or less. Further, Grantee will operate and maintain the activated 5-40 MHZ upstream throughout the Cable System. The Cable System shall be operated in accordance with performance standards which meet or exceed all FCC requirements.

b. Compliance with Laws.

In constructing, operating, and maintaining the Cable System, Grantee shall, at all times, comply with all Laws.

c. Equipment Quality.

Equipment used throughout the Cable System shall be of good and durable quality and be serviced and repaired on a regular basis and shall at all times be of equal or better quality than the equipment provided to any other of Grantee's subscribers and franchisors under any other franchise agreement that are served from the Dimondale headend as of the effective date of this Agreement.

d. Emergency Alert.

Grantee shall provide emergency alert access to the City. The City or its designee will be allowed to initiate emergency messages through the use of remote encoding equipment. The emergency alert service shall be upgraded throughout the Franchise Agreement term as set forth in FCC rules, regulations, or guidelines.

e. Standby Power.

Grantee shall provide twenty-four (24) hour standby power-generating capacity at the headend. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration at all optical node locations in the distribution network.

f. Parental Control Devices.

Grantee shall make available to subscribers, upon request, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and audio portion of such channels to the extent that both are unintelligible. If a subscriber does not utilize a converter to receive cable service and where traps can filter out only the channel of service the subscriber seeks to have blocked and use of such trap will not violate any technical performance standard of this Franchise Agreement, any local ordinance, or federal law (including FCC regulations), Grantee shall make such trap available to the subscriber. Grantee shall block the video and audio portions of all primarily adult programming services to all subscribers not purchasing the service. Grantee may require that subscribers pay for all costs associated with parental control devices.

g. Technical Standards.

The Cable System shall be installed and operated in conformance with this Franchise Agreement and FCC rules and regulations. Any FCC technical standards or guidelines related to the Cable System shall be deemed to be regulations under this Franchise Agreement. At such time as the FCC does not regulate technical standards, Grantee will continue to comply with the FCC standards which were in effect on the effective date of this Franchise Agreement.

h. Employee Identification.

Grantee shall provide a standard identification document to all employees and to subcontractors who enter dwelling units. Such document shall include a telephone number that can be used to verify identification. In addition, Grantee shall use its best efforts to clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of Grantee.

i. Subscriber Drops.

Drops not meeting the standards of the National Electric Code or not having the ability to pass 550 MHZ shall be replaced when found to be substandard. The Cable System shall be designed to allow each subscriber drop to meet FCC technical specifications for subscriber drops.

j. State of the Art.

Grantee shall operate, and maintain the Cable System in accordance with a state of the art of cable communications such that Grantee shall maintain its Facilities

throughout the term of this franchise Agreement in a manner which will continue to enable it to add new services and associated equipment and facilities equal to that which has been developed and demonstrated by existing cable television operators and reputable equipment suppliers to be workable in the field, which is at least as modern and technologically advanced as generally accepted, which is reasonably available and feasible to install, which is in use by at least some other cable systems in comparable areas of equivalent population and system size (excepting only systems that are experimental, a pilot or demonstrational), which customers have paid for in at least other comparable markets for at least a year, which is justified by reasonably predictable subscriber demand and a willingness to pay a reasonable rate for such services, which is based on a reasonable projected rate of return on investment derived from the additional or upgraded capacity, and which investment can be amortized over a period of time which is both reasonable and customary in the cable television industry.

At least one type of digital service, with associated equipment and facilities, shall be offered on the cable television system upon the effective date of this Franchise Agreement. If digital video services are deployed, the number of activated video channels shall exceed those provided for in subsection 5(k) below. In addition to such digital service, Grantee shall make new types of cable services, equipment, and facilities available in the Cable System when such service and associated equipment and facilities meet the following conditions:

i. that their deployment is consistent with Grantee's business plan, provided, however, that the business plan must include reasonable provisions for the introduction of new cable services, equipment, and facilities over the life of the Franchise Agreement; such reasonableness will be assessed based on services, equipment, and facilities by cable Grantees of systems in similarly-sized systems within a two hundred fifty (250) mile radius of the City; and

ii. that the new service, equipment, and facilities can be offered on Grantee's system in an economically and technologically feasible manner in the City (which for the purpose of this subsection means technology which has been demonstrated in actual applications, not simply through tests or experiments, to operate in a workable manner and has application in the future and that the new services, equipment, and facilities can be provided in a manner which is reasonably likely to generate a rate of return acceptable within the industry on similar projects, over the amount of the term remaining on the Franchise Agreement).

k. Additional Services.

Upon the effective date of this Franchise Agreement, Grantee shall provide a minimum of sixty (60) activated video channels and within five (5) years of the effective date of this Franchise Agreement shall offer a minimum of seventy-five (75) activated video

channels, with a similar mix, level, and quality of programming as provided to subscribers on the effective date of this Franchise Agreement.

l. Leased Access Channels.

Grantee shall offer leased access channels at such terms and conditions and rates as may be negotiated with each lessee subject to the requirements of Section 612 of the Cable Act and FCC rules and regulations.

m. Cable Drops and Monthly Service.

Upon the request of the City, Grantee shall provide one outlet of Basic Cable and Cable Programming service, at no monthly cost to the City, to each of the following entities located within the City: City Administrative department, Police department, Fire department(s), Power House, public schools and two (2) Marshall House apartments and activity room, provided that each entity is located within 250 feet of Grantee's cable system. City shall pay Grantee installation costs, calculated at Grantee's cost for time and materials, for any such service installed in municipally-owned buildings. Upon request, Grantee shall provide additional outlets of such service to the public schools at no monthly cost; however, installation of additional outlets shall be provided at Grantee's cost for time and materials.

n. Institutional Use of Access Channels.

At the request of the City, Grantee shall provide scrambling for non-commercial purposes as requested by the City or its designee on the government and educational access channels as permitted by Federal law. The requesting agency shall bear all reasonable costs associated with its request, including Grantee's personnel time and expenses and for all equipment necessary to provide scrambled programming, prior to the use of such service. Grantee shall provide the City with an invoice detailing said time, expenses, and equipment.

o. Closed Captioning.

Grantee shall pass through all closed-captioned signals received by the Cable System for the hearing impaired.

p. Internet.

Grantee shall provide commercial cable modem service to City Hall and one location to be determined by the City. Service to both locations shall be provided at Grantee's cost for such service. The service location to be determined by the City shall be located within two hundred (200) feet of Grantee's existing cable system. Grantee shall also provide at each location, at cost, twenty-four (24) hour a day Internet service. The City shall be responsible for the installation expense for such services provided by Grantee on a time and materials basis.

6. Access Channels, Equipment, Facilities, and Services.

In order to develop and promote public, educational, and government (PEG) access programming for the Cable System's access channels, Grantee hereby agrees to provide the following:

a. Access Channels.

i. Grantee shall provide the City with two (2) PEG access channels for its noncommercial use. The PEG access channels shall be located in the Basic Cable Service tier. Grantee shall use its best efforts to maintain the cable channel positions of the access channels throughout the term of this Franchise Agreement.

ii. Following the completion of Grantee's upgrade of all Cable Systems served by the local headend or OTN (optical transition node) and at the written request of the City, Grantee shall make available the bandwidth, for a third PEG access channel provided that the existing PEG access channels are in use for twelve (12) hours per day for twelve (12) consecutive weeks cablecasting non-repetitive locally produced programming.

b. Publicity.

Grantee agrees to provide the following publicity services at its own expense:

i. If Grantee offers an electronic channel guide to subscribers and is capable of providing local program listings at a reasonable cost, and listings of local access programs are provided by the City in a timely manner, Grantee shall, upon request, ensure that City-provided listings are carried on a daily basis. In the event there is more than one electronic channel guide offered by Grantee, this provision shall apply to that guide which is received by the greater number of subscribers.

ii. Grantee will include written information provided by the City about educational and government access programming and activities in its customer information materials given to new subscribers. After consulting with Grantee regarding format, the City shall provide such materials at its own expense.

iii. The City may annually print and supply bill stuffers to Grantee, which shall use said stuffers when space is available to provide City-related information to Grantee's customers located in the City, but at least once a year. The City will coordinate with the Cable System manager on distribution. The City shall be responsible for Grantee's external costs for such billing insertions.

c. Signal Quality.

Grantee shall assure that delivery of access channels will meet the same technical standards as the remainder of the Cable System. In no event, however, shall Grantee be responsible for maintenance or operation of equipment not provided by and owned by Grantee or for the effects that such equipment may have on the signal quality of any access channel.

d. Technical Problems.

In the event a significant technical problem (which appears to involve or arise from the Cable System's return path and not the City's audio and video equipment) occurs before or during a live transmission of a regularly scheduled governmental meeting on an access channel, Grantee shall use reasonable efforts to respond with next business day service to a request by the City for technical assistance to alleviate the problem. In the event Grantee is unable to respond immediately because of an outage elsewhere in the system, Grantee shall respond as soon as possible.

7. Construction.

a. System Design Review.

The City shall have the authority to review the technical design plans of system extensions exceeding one (1) mile of cable plant to unserved areas to ensure that the Cable System design meets the requirements of this Franchise Agreement, city Ordinances, as well as applicable portions of the City building code governing construction within public rights-of way. Grantee shall inform the City in writing of the areas exceeding one (1) mile of cable plant to be constructed and, upon request, shall provide the following design information: engineering design maps; key for design maps; system level design information (e.g., block diagram of headend, satellite or off-air studies, power supply map); test plan for the existing coaxial cable to be used in the Cable System; and contact engineer who will be available to discuss project details. Grantee's engineer will review the design with the City's designated persons.

b. Subscriber Information.

Prior to the commencement of any major system construction, Grantee shall place informational advertising in a local newspaper of significant distribution and shall place related information on customer invoices, which shall describe the activity that will be taking place.

c. Construction and Safety Manuals.

Grantee shall construct its system in accordance with its own construction and/or safety manuals, if they exist and as they exist at the time of said construction (unless a pre-existing condition, caused by a third party, prevents said compliance).

d. Consumer Compatibility.

Grantee shall comply with FCC consumer compatibility rules and guidelines and will use its best efforts to provide subscriber friendly technology. The basic tier of service shall not be scrambled other than as may be required below regarding access channels and unless expressly allowed by Federal law.

e. Clean Up.

Before leaving a job site each day, Grantee's employees and contractors shall take reasonable steps necessary to ensure that the site is not thereafter a safety hazard to the public nor a source of litter or debris to adjacent properties. When finished at a job site, all litter and debris, as well as items which pose a safety risk to the public, shall be removed.

f. Easements.

Prior to placing facilities on private property, Grantee shall secure all necessary easements from the affected property owner, unless Grantee can lawfully use an existing compatible easement.

g. Notice of Shutdown.

At least twelve (12) hours before any planned shutdown, when possible, Grantee shall give reasonable notice of maintenance or major equipment change-outs which result in loss of service to a neighborhood or larger area.

h. Right of Inspections.

The City shall have the right to inspect all construction and installation work performed subject to the provisions of this Franchise Agreement, and shall make such tests as it shall deem necessary to ensure compliance with this Franchise Agreement and all applicable law. Grantee shall cooperate fully with the City during all inspections and tests and shall provide access to all equipment, records, and other materials and information necessary for such inspections and tests. Except as stated herein to the contrary, all such inspections and tests performed by the City shall be initially at the City's sole cost and expense. If the results of the tests and/or inspections reveal a material non-compliance with the terms of this Franchise Agreement, Grantee shall reimburse the City for that portion of the costs of said inspections and tests which relate to the non-compliance. Said reimbursement is not to be considered a part of the Franchise Agreement fee.

i. Internal Wiring.

Grantee shall connect its service to subscribers who have installed internal wiring not owned or installed by Grantee, providing such wiring meets FCC technical standards and, to the extent applicable, the City Electric Code. Grantee shall provide, upon request, information on internal wiring which will indicate materials for internal wiring. Grantee reserves the right to disconnect service to those subscribers who have installed their own internal wiring and do not correct any signal leakage problems upon reasonable notice by Grantee.

j. Company Representative.

Grantee shall designate an employee to act as a Company representative by responding to public service complaints on a daily basis during any construction and provide the City with the person's name and telephone number.

8. Tests and Performance Monitoring.

a. Completion Tests.

Grantee shall visually inspect above-ground cable plant facilities (i.e. fiber and coaxial cable) and shall conduct signal quality performance tests to ensure that the signal quality of the system meets the technical standards contained in this Franchise Agreement and the technical standards and guidelines of the FCC. Thereafter, annually, Grantee shall conduct technical performance tests of the system to demonstrate compliance with the above requirements. The results of such test (and those mandated by the FCC) will be made available to the City upon request.

b. Completion Test Methodology.

Such test shall be performed by, or under the supervision of, a qualified professional engineer. A copy of the report, upon request, shall be submitted to the City, describing test results, instrumentation, calibration, test procedures and the qualifications of the engineer responsible for the test.

c. Test Points.

System monitor test points for performance testing shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities in accordance with FCC regulations. Such periodic performance tests shall be made at the test points as shall be required by the FCC and/or this Franchise Agreement.

d. Performance Testing.

Grantee shall perform all system tests and maintenance procedures as required by and in accordance with the FCC regulations, this Franchise Agreement, and Grantee's

then current operating standards. Upon request, a copy of any performance test reports required herein shall be submitted to the City within sixty (60) days of completion.

e. General Maintenance.

Grantee shall maintain wires, cables and all other real and personal property and facilities constituting the Cable System in good condition, order and repair at all times during the term of this Agreement.

f. Investigation and Remedial Action.

For recurrent complaints regarding service deficiencies, the City Manager, or designee, may require Grantee to investigate and report to him/her the causes and cures thereof, and the City Manager may also conduct his/her own investigation. Thereafter, the City Manager may order specified remedial action provided that the remedies are within the reasonable control of Grantee to be taken within reasonable time limits. If such action is not taken, or is ineffective, or if within thirty (30) days Grantee files with the City a notice of objection to the order, the City may conduct a hearing and may, if the evidence warrants a finding of fault on the part of Grantee, take appropriate action pursuant to the terms of this Agreement and the Ordinance.

9. Subscriber Information and Policy.

a. Subscriber Information.

Grantee shall provide to all subscribers, prior to installation and annually thereafter, and to all persons upon request, written information concerning: products and services offered, prices and service options, availability of parental lockout devices, subscriber privacy rights information, how to use the cable service (including use of a VCR, so long as they are commonly in use), and Grantee's policies regarding billing, collection, installation, service, refunds, complaint procedures, deposit, upgrade, downgrade, and changes to or termination of service. Copies of such information will be provided to the City by February 28 of each year, upon request.

b. Business Offices and Personnel.

Grantee shall continue to maintain a business office within the Cable System's service area which shall, at a minimum, be staffed to receive and respond to customer service inquiries, and receive payments and Grantee-owned equipment for a combined total of fifty (50) hours a week (excluding weeks which contain a Federal holiday), including some weekday, evening, and Saturday hours. Grantee shall also provide personnel, telephone service, including a locally listed telephone number, and other equipment, as needed within the area, to ensure timely, efficient and effective service to subscribers and for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation, and maintenance of the Cable System and for the payment of subscribers' service charges.

c. Subscriber Complaints.

Grantee shall promptly and reasonably respond to and resolve all subscriber complaints which relate to matters covered by this Franchise Agreement. However, nothing herein shall require Grantee to maintain or repair any equipment not provided by it.

d. Telephone Service.

Grantee shall have a listed local or toll free telephone number for service calls available twenty-four (24) hours a day, seven (7) days a week. Said number shall be made available to subscribers and the general public. Grantee shall provide an unlisted locally-staffed telephone number or a pager or cell phone number maintained by a technical manager to the City to enable the City to reach Grantee in case of emergency on a 24-hour, 7-days-a-week basis.

e. Response to the City.

The City will use its best efforts to notify Grantee of subscriber complaints received by the City. Grantee shall use its best efforts to contact subscribers whose complaints have been handled by the City within twenty-four (24) hours of City notice to Grantee. Grantee shall respond by telephone or in writing to the City within three (3) business days regarding the resolution of such subscriber complaints. Grantee shall have a general manager or its equivalent for the Cable Systems within 75 miles of the City.

f. Major Outages.

Grantee shall maintain records of all major outages, defined as a discontinuation of cable service for five (5) or more homes. Such records shall indicate the service area affected, the date and time of first notification or of Grantee knowledge of the outage, the date and time service was restored, the cause of the outage and a description of the corrective action taken. Such records shall be available to the City during normal business hours upon reasonable prior notice and retained in Grantee's files for not less than two (2) years. Upon written request of the City, a statistical summary of such records shall be prepared by Grantee and submitted to the City annually.

g. Customer Service Standards.

Grantee shall meet the FCC's Standards for Customer Service, and the agreed upon standards set forth in any hereinafter enacted ordinance or policy of the City. Grantee shall, upon request, provide to the City annual statistics measuring compliance with quantifiable customer service standards and make available for inspection data from all service centers used by Grantee related to compliance with the FCC's Standards for Customer Service. At such time as Grantee does not meet the FCC, and/or this Franchise Agreement and/or City requirements for repair for one quarter, Grantee shall take

corrective action to ensure that such standards are met during the next quarter. At such time as the FCC no longer promulgates Consumer Service Standards the FCC standards in effect on the effective date of this Franchise Agreement will be in force.

h. Downgrades.

Subscribers shall have the right to have cable service downgraded in accordance with FCC rules. No charge shall be made for complete disconnection of service. The billing for the discontinued service shall terminate no later than the following business day. The actual disconnection or downgrade shall be made as soon as practicable. On average, a refund of unused service charges shall be paid to the subscriber within forty-five (45) days from the date of termination of service. Basic only subscribers shall not be charged for converters unrelated to the delivery of basic service, e.g. no charge for converters to block tier programming.

i. Outages.

Grantee, upon subscriber request, shall credit the subscriber's account on a pro rata basis for verifiable outages (i.e. loss of visual or audio) of twelve (12) hours or more for the levels of service affected by such outages. Grantee may, at its option, grant subscriber credit on a pro rata basis as it deems necessary for any loss of service.

j. Subscriber Notices.

Upon request, Grantee shall file a standard copy of Grantee's subscriber notice with the City and forthwith after any change thereto.

k. Negative Option Billing.

Grantee shall comply with Federal law regarding negative option billing.

l. Repair Calls.

Grantee shall offer subscribers repair service appointments within, under normal operating conditions, four (4) hour windows. Grantee will conduct repair calls on weekdays and Saturdays, excluding Holidays.

m. Installation.

Subscriber service shall be installed within seven (7) days of a request during normal operating conditions.

n. Subscriber Bill.

Grantee shall include its name, address and telephone number on the subscriber bill specifically the portion of the bill retained by the subscriber.

o. Technological Developments.

When applicable, Grantee shall provide the City with an annual report that describes Grantee's ongoing plans for technical system development and will provide the City with reports on the progress of technological and regulatory developments related to cable communications systems.

p. Standard Installations.

Standard installation shall consist of a service not exceeding one hundred fifty (150) feet from Grantee's nearest feeder-line or subscriber tap pedestal to the customer's residence. Service in excess of 150 feet and concealed wiring shall be charged at such cost as exceeds normal installation costs. The desire of the subscriber as to the point of entry into the residence or commercial establishment and location of pedestal shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration process shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.

q. Delinquent Accounts.

Grantee shall use commercially reasonable efforts to collect on delinquent subscriber accounts. An account shall not be deemed delinquent until a minimum of 30 days has elapsed from the cycle date upon which the invoice is generated without Grantee receiving payment in full for services billed. Grantee shall provide the subscriber with a notice prior to disconnection.

In case of a billing dispute, the Grantee shall respond to a written complaint from a subscriber within 30 days.

r. Complaint Records.

Grantee shall keep and maintain records in connection with all complaints received from subscribers in connection with the Cable System. Such records shall identify the complainant, the nature of the complaint, the person responding to the complaint, the date and time it was received, the resolution or action taken regarding the complaint and other such information deemed pertinent by the City. Said records shall be available for review by the City.

s. Equipment Service.

Grantee shall service, repair or replace without charge all Grantee-owned equipment including, but not limited to converters and modems, that it provides subscribers

to receive or utilize such services, provided, however, that there may be a charge when equipment is damaged or lost due to the subscriber's negligence or willful misconduct.

t. **Unresolved Complaints.**

In the event a subscriber's complaint has not been resolved to the subscriber's satisfaction, Operator shall notify the subscriber that the subscriber may make the City aware of said Complaint. The City may then elect to contact Grantee to discuss the matter. Grantee shall respond in good faith in an attempt to reach a resolution of the complaint which is reasonable and in accord with this Franchise Agreement.

u. **On Call Requirements.**

So as to deal with outages and other problems during non-business hours, Grantee shall ensure that a technician is on call during all non-business hours (including evenings, weekends and holidays). Said technician shall be reachable, at all times, by Grantee or will call in bi-hourly. All outages must be corrected as soon as practicable. Potentially hazardous situations, such as Grantee's downed wires or broken poles, will be promptly corrected. If appropriate, action to remedy an outage is not taken within an hour of its being reported, a supervisor will be notified.

10. Non-Discrimination.

Grantee agrees that it shall not illegally discriminate in providing service to the public nor against any employee or applicant for employment because of race, color, religion, sex, national origin or age.

11. Rates.

The City shall have the ability to regulate rates in accordance with Federal law.

12. Franchise Agreement Renewal.

This Franchise Agreement may be renewed in accordance with applicable Federal law.

13. Police Powers.

In accepting this Franchise Agreement, Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power not materially in conflict with this Franchise Agreement.

14. Liability and Insurance.

a. Certificate of Insurance.

No later than sixty (60) days after the effective date of this Franchise Agreement and thereafter continuously throughout the duration of this Franchise Agreement and any extensions or renewals thereof, Grantee shall furnish to the City, certificates of insurance for all insurance required under this Section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Franchise Agreement. At the City's request, Grantee shall furnish copies of any or all policies which are in effect from time to time.

b. No Liability Limit.

Neither the provisions of this Section or any damages recovered by the City hereunder, shall be construed to nor limit the liability of Grantee for damages.

c. Endorsement.

All insurance policies maintained pursuant to this Franchise Agreement or the Ordinance shall contain the following, or a comparable endorsement:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agent or representatives.

d. Hold Harmless Clause.

All contractual liability insurance policies maintained pursuant to this Franchise Agreement shall include the provision of the following hold harmless clause:

Grantee agrees to fully indemnify, defend and save harmless the City, its agents, officials and employees against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees, which arise out of or through the acts or omissions of Grantee, its agents, officials or employees; said indemnification obligation shall not apply when said lawsuit, claim, demand, liability, loss or expense arises from the act, omission, negligence or gross negligence of the City or its agent, official or employee or any programming cablecast on access channels.

e. State Institution.

All insurance policies provided under the provisions of this Franchise Agreement or the Ordinance shall be written by companies authorized to do business in the State of Michigan.

f. Commercial General Liability Insurance.

Grantee shall maintain, and by its acceptance of any Agreement granted hereunder specifically agrees that it will maintain throughout the term of the Franchise Agreement, general liability insurance insuring Grantee in the minimum of:

- i. \$1,000,000. Per Occurrence for Bodily Injury & Property Damage
- ii. \$2,000,000. General Aggregate for Bodily Injury & Property Damage
- iii. \$2,000,000. Products Aggregate for Bodily Injury & Property Damage

g. Additional Insured.

The City, its agents, officials and employees shall be named as additional insureds for all commercial general liability coverage.

h. Policy Inclusions.

Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage and personal injury.

i. Automobile Liability Insurance.

Grantee shall maintain, throughout the term of this Franchise Agreement, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- i. \$1,000,000. Per Occurrence for Bodily Injury & Property Damage

j. Worker's Compensation and Employer's Liability Insurance.

Grantee shall maintain throughout the term of this Franchise Agreement, Worker's Compensation and employer's liability insurance, valid in the State, as amended.

k. No Limitation on Liability.

None of the provisions of this Franchise Agreement or any insurance policy required herein, or any damages recovered by the City hereunder, shall be construed to excuse the faithful performance by or limit the liability of Grantee under this Franchise Agreement for damages either to the limits of such policies or otherwise.

l. Indemnification of City.

Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its agents, officers and employees against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney fees, ("Indemnification Obligations"):

- i. Arising out of death or injury to persons or property, in any way arising out of or through the acts or omissions of Grantee, its agents, officials or employees, or to the extent to which Grantee's negligence shall in any way contribute.
- ii. Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation.
- iii. Arising out of Grantee's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to Grantee in its business hereunder, except to the extent such Indemnification Obligations arise from (i) the negligent conduct or willful misconduct of the City, its agents, servants and employees, or (ii) any programming cablecast on access channels.

The foregoing indemnity is conditioned upon the City providing Grantee notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own costs and expense. No recovery by the City of any sum by reason of the liquidated damages required by this Franchise Agreement shall be subject to litigation by Grantee, except that any sum so received by the City shall be deducted from any recovery which the City might have against Grantee under the terms of this Section.

m. Notice of Litigation.

Grantee shall immediately advise the City of any litigation that may develop that would affect any insurance required of Grantee.

n. Access Hold Harmless/Insurance Clause.

The City may, in its sole discretion, cause the entity receiving principal funding for public, education and government access ("Access Organization") to include Grantee as an additional insured on the Access Organization's Commercial General Liability Insurance (CGL) and on its Media/Professional Insurance (a.k.a. Broadcasters and Advertisers Errors and Omissions insurance). In the event the City elects to exercise this option, the CGL insurance shall be no less than \$1,000,000 for both property damage, per occurrence, and for aggregate limit for liability (including personal liability and death). The Media/Professional Insurance shall be in an amount no less than \$1,000,000 per

occurrence. Both such insurance policies shall contain the following, or substantially similar, endorsement:

"It is hereby agreed that this policy may not be modified or canceled by the insurance company, nor the intention not to renew be stated by the insurance company until 30 days after receipt by Grantee, by registered mail, of a written notice of such intention to cancel or not renew."

In the event the City is unable to cause Grantee to be named as an additional insured on said policies, or simply elects not to do so, the City, in that event, agrees to indemnify, save harmless and defend Grantee, its agents, officers and employees, and each of them, against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney fees which may arise or which may be alleged to have arisen out of the Access Organization's programming, channel utilization or operation. This indemnification agreement shall not apply when the lawsuit, claim, demand, liability, loss or expense is the result of either the negligent or willful misconduct of Grantee, its officers, agents or employees.

15. Rates and Charges.

a. Schedule Filings.

Grantee shall keep the City informed of all its rates and charges for cable services to subscribers (excluding promotional rates and offers). Grantee shall file such rates and charges within thirty (30) days of the effective date of this Agreement. Thereafter, Grantee shall provide the City in a timely manner with written notice of any changes to such rates and charges. As may be required by the FCC, Grantee shall notify subscribers and the City in writing at least 30 days before any increase in rates or change in programming service over which Grantee has control.

b. Nondiscriminatory Rates.

Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers for all services. Nothing contained herein shall prohibit Grantee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; (iv) discount for senior citizens and/or low income residents or (v) or to establish non-uniform rate structure if the system becomes subject to effective competition, as defined by Federal law. Grantee's charges and rates for all services shall be itemized on subscriber's monthly bills.

c. City Regulation.

To the extent that federal or state law or regulation may now, as the same may hereafter be amended, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City.

d. Rate Regulation of the Basic Tier and Charges.

The City shall follow FCC Rate Regulations as they now exist or as hereafter amended by the FCC from time to time, in its regulation of the basic service rates and charges of Grantee.

e. Ability to Petition.

If applicable, the City shall have the right to petition the Federal Communications Commission or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the City.

16. Performance.

a. Cooperation by Grantee.

Grantee shall at the request of the City, send a representative to attend a scheduled City Council meeting, to discuss matters related to the Cable System. During any performance review or evaluation by the City, Grantee shall fully cooperate with the City and shall make available for inspection such information and documents (including those required by the section below regarding books, records and reports") and respond to inquiries as the City may need to reasonably perform its review, unless the City refuses to agree to not release said information other than as may be required by the Michigan Freedom of Information Act or other applicable law.

b. Response to Inquiries.

The City may, at any time, make inquiries, concerned with the management and affairs of the Cable System. Grantee shall respond to such inquiries in a timely fashion.

17. Protection of Subscriber Privacy.

a. Protection of Subscriber Privacy Mandatory.

Grantee and the City shall at all times protect the privacy of subscribers, as provided in this Franchise Agreement and other applicable Federal, State, and local laws.

18. Modifications Due to Changes in Laws or Regulations

The City or Grantee may seek modification of this Franchise Agreement due to changes in federal or state laws or regulations in accordance with the following procedures:

a. Notice

The party seeking modification shall serve the other party notice of a request for modification under this Section. The notice shall specify (i) the changes in laws or regulations on which the modification request is based, and (ii) the desired modifications.

b. Mutually Agreeable Modifications

Within 60 days of delivery of the notice, representatives of the City and Grantee shall meet to develop mutually agreeable modifications to the Franchise. Any mutually agreeable modifications shall be presented to the City Council for consideration.

c. Proposals for Modifications

If the City and Grantee cannot develop a mutually agreeable recommendation for modification within a reasonable time, then the City and Grantee shall submit to the City Council their respective proposals for modification under this Section.

d. City Council Action

City Council shall review the proposals and comments of interested parties at a public meeting. City Council shall then issue a decision concerning any modification to the Franchise Agreement under this Section.

e. Appeals

Grantee may appeal under applicable law a denial of a modification proposal under this Section.

19. Equal Opportunity Policy.

Grantee shall be an Equal Opportunity/Affirmative Action Employer adhering to all Federal, State or municipal laws and regulations. Pursuant to applicable regulations of the FCC, Grantee shall comply with all FCC regulations with respect to Equal Employment/Affirmative Action Opportunities.

20. Regulation.

a. Authority.

The City shall exercise appropriate regulatory authority under the provisions of City ordinances and this Franchise Agreement.

b. Agreement.

Grantee, by accepting the rights hereby granted, agrees that it will perform all acts and obligations lawfully imposed or promised by the terms of this Franchise Agreement and City ordinances.

c. City Rights.

These rights reserved to the City are in addition to all other rights of the City, whether reserved by this Franchise Agreement, or authorized by law, and no action, proceeding or exercise of a right with respect thereto shall affect any other right the City may have.

d. Waiver.

Grantee specifically waives for itself and any transferee any claim pertaining to the technical requirements, public, educational, and governmental access or other provision as being unlawful, invalid, beyond the scope of the City's lawful right to enforce, that it may contend exists at the time of the execution of this Franchise Agreement. Grantee, by accepting the rights hereby granted, agrees that it will perform and keep all acts and obligations imposed, represented or promised by the provisions of this Franchise Agreement.

e. Time is of the Essence to this Franchise Agreement.

Whenever this Franchise Agreement shall set forth any time for any act to be performed by or on behalf of Grantee, such time shall be deemed by the essence any failure of Grantee to perform within the time allotted shall always be sufficient ground for the City to invoke an appropriate penalty including possible revocation of this Franchise Agreement.

21. Noncompliance; Penalties, Revocation and Liquidated Damages.

In case of material noncompliance with any term of this Franchise Agreement, the City may assess penalties and terminate this Franchise Agreement in accordance with the procedures in this section.

a. Notice of Complaint.

The City shall provide Grantee with written notice of the complaint. The Notice shall describe in reasonable detail the alleged material noncompliance.

b. Opportunity to Cure.

Grantee shall have 60 days from receipt of written notice to cure the alleged material noncompliance. If the written notice of complaint pertains to a failure to pay franchise fees as specified in Section 4b. herein, said time frame shall be reduced to fifteen (15) days. If Grantee cures the alleged material noncompliance with the given time period, the City shall provide Grantee with written notice withdrawing the complaint.

c. Hearing.

In matters other than a failure to pay franchise fees, if Grantee fails to cure the alleged noncompliance within the specified cure period, or if Grantee provides the City with written notice disputing the complaint, and the parties fail to otherwise resolve the matter, the City shall schedule a hearing on the alleged noncompliance. At the hearing, the Grantee may present testimony, cross-examine witnesses and present all evidence relevant to Grantee's defense. At the conclusion of the hearing, the City may dismiss the complaint, defer action, award Liquidated Damages pursuant to subparagraph (d) or Franchise Agreement termination in accordance with this section. For the purpose of this section, the hearing officer shall be the City Manager, unless the amount at issue exceeds \$500, in which case the hearing officer shall be the City Council.

d. Liquidated Damages

Notwithstanding any other remedy provided herein or otherwise available to the City, the City shall have the power to assess and recover from Grantee certain liquidated damages, pursuant to the following:

i. For a failure to provide to the City data, documents, reports or other information required by this Franchise Agreement (other than those which relate to tests or analysis) within the time allowed by this Franchise Agreement, the sum of \$50 per day for each day after said deadline that said non-compliance persists.

ii. For a failure to substantially comply with the terms of a test or analysis required by this Franchise Agreement within the time allowed by this Franchise Agreement (or, if there is no specified deadline, within 60 days of the date of Grantee's receipt of the written notice from the City), the sum of \$100 per day for each day after said deadline that said non-compliance persists.

iii. For a failure to substantially comply with a material provision of this Agreement within the time allowed by the Agreement (or, if there is no specified deadline, within 60 days of the date of Grantee's receipt of the written notice from the City), the sum of \$100 per day for each day after said deadline that said non-compliance persists.

iv. No single failure to comply by Grantee shall be assessed for more than one of the above categories of assessment. An assessment relating to

specified days, however, shall not preclude an assessment or other action for the same type of failure for other days.

v. No assessments shall be formulated for violations of which the City had knowledge or reasonably should have had knowledge for more than 60 days prior to said written notice.

vi. The City may, in its sole discretion, reduce the amount of the liquidated damage in the event it believes said sum is excessive, given the circumstances.

vii. A failure which is the basis for an assessment which is paid by Grantee in accordance with the time allowed in subparagraph (ix), may not also provide a basis for a revocation; however, in the event that a failure which is not assessed is asserted by the City as a basis for revocation, prior assessed failures may be referenced to show a pattern or practice.

viii. The City's decision to impose an assessment for a specified failure for specified days shall not prevent it from imposing additional assessments, or taking other action, relating to other failures or other days.

ix. If the City concludes that Grantee is liable for liquidated damages pursuant to this section, the City shall deliver to Grantee an invoice for the amount of the assessment. Grantee shall pay the City the amount of the assessment within forty-five (45) days.

e. **Termination**

The City may, after a hearing, terminate this Franchise Agreement for material and willful continuing noncompliance by Grantee. Any such termination must be consistent with Federal law. If Grantee contests the termination in a court of competent jurisdiction, Grantee may operate the Cable System in accordance with this Franchise Agreement while the case is pending.

22. Cooperation.

The parties recognize that it is within their mutual best interests for the Cable System to be operated as efficiently as possible in accordance with the requirements set forth in this Franchise Agreement. To achieve this, parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise Agreement. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party may notify the person or agents specified herein. The person or agent thus notified will use its best effort to facilitate the particular action requested.

23. Waiver.

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

24. Cumulative Provision.

The rights and remedies reserved to the City by this Agreement are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

25. Notices.

Notice shall be deemed as given hereunder upon personal delivery to the addresses set forth below or, if properly addressed, one (1) day after depositing such notice with postage prepaid in a United States mailbox or one (1) day after depositing such notice in the custody of a nationally recognized overnight delivery service. Notice shall be deemed properly addressed if sent to the following addresses:

If to City:

City Manager
City of Marshall
323 West Michigan Avenue
Marshall, MI 49068

If to Grantee:

BROADSTRIPE
~~Millennium Digital Media Systems, L.L.C.~~
2512 Lansing Road
Charlotte, Michigan, 48813

Attn: President - Central Region

1-800-444-6997 RICK CLARK

With a copy to:

~~Millennium Digital Media Systems, L.L.C.~~ *CORA OFFICES*
120 South Central Avenue, Suite 150 *13455 NOEL RD., STE. 1310*
St. Louis, MO 63105-1750 *DALLAS, TX 75240*

Attn: Sr. VP - Operations

1-972-663-6971

26. Captions.

Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provision of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of the Franchise Agreement.

27. No Joint Venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public, in any manner which would indicate any such relationship with the other.

28. Entire Agreement.

This Franchise Agreement and applicable City ordinances and all Law and all attachments thereto as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only as provided in said Ordinances. Any change to this Franchise Agreement shall require the express approval of both parties and shall be in writing.

29. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise Agreement.

30. Drafting.

This Franchise Agreement has been executed after negotiation and the opportunity by both parties to have this Agreement reviewed and revised by legal counsel of their choice. None of the provisions of this Agreement shall be interpreted or construed against a party hereto, solely by virtue of the fact that any such provision shall have been drafted by legal counsel representing such party.

31. Effective Date.

This Franchise Agreement shall become effective when the City Council has authorized the Mayor to sign this Franchise Agreement and the Mayor and an authorized representative of Grantee have both so signed and endorsed the effective date hereon.

32. Non-assignability.

Grantee shall not pledge, encumber, transfer, sell or assign the rights granted to it by this Franchise Agreement, in whole or part, without the express written consent of the City. The City, upon receiving adequate assurance of continuity of service, shall not unreasonably withhold consent to any pledge, encumbrance, transfer, sale or assignment. No sale, assignment, redemption, pledge or encumbrance of the majority of the membership shares of Grantee shall be permitted without the express written consent of the City. The City, upon receiving adequate assurance of continuity of service shall not unreasonably withhold consent to any such transfer, redemption, sale, pledge, encumbrance or assignment of such stock, provided, however, the City's consent shall not be required for the assignment of or the granting of a security interest in this Franchise Agreement or the Cable System for the purpose of securing the Grantee's indebtedness.

The term "adequate assurance of continuity of service", as used in this paragraph, shall mean that the City shall be reasonably satisfied that, as a result of any of the aforesaid transactions, the persons or entities controlling Grantee thereafter shall (i) have the experience to operate the Cable System, (ii) can demonstrate a financial condition which will reasonably ensure continued high standards of maintenance and operation of the Cable System, (iii) have obtained all necessary permits, licenses and approvals for ownership and operation of a Cable System, (iv) have obtained the policies of insurance herein and letters of credit required herein (v) have agreed, in writing, to be bound by the terms of this Franchise Agreement, and (iv) in all other respects have provided the City with evidence that such transactions will not result in interruption or impairment of quality cable service to subscribers.

33. Status After Termination.

If this Franchise Agreement shall be terminated in accordance with the provisions hereof, or shall not be renewed due to Grantee's decision not to renew, by mutual agreement or in accordance with the Cable Act, the Grantee shall, if not disposed of pursuant to the Cable Act, remove its Cable System not later than the 300th day following the date of termination or expiration of this Franchise Agreement. Any part of the Cable System not removed at the expiration of said period shall be deemed abandoned, become the property of the City and the City shall have the right to remove the Cable System at Grantee's expense. In this context, the Cable System shall not include equipment in buildings owned or leased by Grantee or in the nature of cable boxes used by subscribers.

34. Security.

In order to secure the payment by Grantee to the City of all amounts due under the Franchise Agreement or any other agreement between City and Grantee, and any taxes due from Grantee to the City:

Not later than sixty (60) days following acceptance by the City, Grantee shall deliver to the City Clerk an unconditional, irrevocable letter of credit issued by a national bank having an office in Calhoun County or Eaton County, Michigan or a mutually agreed upon location. Such letter of credit shall be in form and substance subject to the reasonable

approval of the City. Such letter of credit shall be hereinafter referred to as "LOC1". LOC1 shall be in the sum of \$50,000 and the City shall be entitled to draw upon LOC1 for any payments due it from Grantee other than for costs to remove the Cable System. Not later than thirty (30) days prior to the expiration date of LOC1, Grantee shall deliver to the City Clerk a replacement LOC1 in an amount not less than the franchise fees paid for the twelve (12) calendar months ending on December 31 of said year. Not later than forty-five (45) days following the end of each calendar year, Grantee shall evaluate the sum of LOC1. If during such evaluation Grantee finds that the total of all franchise fees paid to the City for the preceding twelve (12) months ("annual fees") exceeds such LOC1 sum by more than five (5) percent, Grantee shall, at the City's option, cause such LOC1 sum to be increased to the amount of the preceding year's annual fees rounded to the nearest one hundred dollars. The same procedure shall be in effect for each replacement LOC1. If a replacement LOC1 shall not be timely delivered in any year, the City shall be entitled to draw the full amount of the then existing LOC1 and LOC2 and Grantee shall be deemed in material noncompliance with this Franchise Agreement.

Not later than sixty (60) days following acceptance by the City, Grantee shall deliver to the City Clerk an unconditional, irrevocable letter of credit issued by a national bank having an office in Calhoun County or Eaton County, Michigan or a mutually agreed upon location. The letter of credit shall be in form and substance subject to the reasonable approval of the City. The amount of such letter of credit shall be Forty Thousand and 00/100 (\$40,000.00) dollars. Such letter of credit is referred to herein as "LOC2". LOC2 shall be held by the City to secure the costs of removal of the Cable System pursuant to paragraph 33, in the event that the Cable System shall not be removed by Grantee and the City shall elect to do so. The letter of credit shall have an expiration date of not less than one (1) year after the date of its issuance. Not later than thirty (30) days prior to the expiration date of LOC2, Grantee shall deliver to the City Clerk a replacement LOC2 in the same amount. If a replacement LOC shall not be timely delivered, the City shall be entitled to draw the full amount of the then existing LOC1 and LOC2 and Grantee shall be deemed in material noncompliance with this Franchise Agreement. If the City shall elect to remove the Cable System or any part thereof after termination or expiration of the Franchise Agreement in accordance with the provisions of paragraph 33, it shall be entitled to draw upon the letter of credit for its costs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Witnesses

CITY OF MARSHALL

By: _____

Its: City Clerk

L.L.C.

MILLENNIUM DIGITAL MEDIA SYSTEMS,

By: _____

Its: Senior VP - Operations _____

Approved as to form

City Attorney

EFFECTIVE DATE: _____

EVENT REPORT

EVENT: Marshall Music Faire

EVENT LOCATION: Stuart's Landing

SPONSOR: Live Music & Festivals Inc.

EVENT DATE: April 30, 2011 (rain date May 1, 2011)

EVENT TIMEFRAME: 11am to 6pm

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

LANE CLOSURE TIMEFRAME: None

EVENT STREETS AFFECTED: None

DETOUR DETAIL: None

EVENT DETAIL: Buy, sell, perform, dance, jam, and listen something for everyone. Got musical equipment, instruments, music books, CDs, anything musical you want to buy, sell, or trade this is the time and place.

COUNCIL NOTIFICATION DATE: March 21, 2011

Tom Tarkiewicz

From: Ken Jendryka [Ken@Marshallrv.com]
Sent: Tuesday, March 15, 2011 11:32 AM
To: Tom Tarkiewicz
Cc: Jaryl Day
Subject: Use of Stuart's Landing April 30-May 1, 2011

Tom,

It is my understanding that you need a request from our organization, Live Music & Festivals, Inc., to reserve Stuart's Landing.

As President of Live Music & Festivals, Inc., I am requesting to reserve Stuart's Landing Band Shell and surrounding areas (including rest rooms) for Saturday, April 30, 2011 for use for our Marshall Music Faire program and Sunday, May 1, 2011 as a rain date. This is the same program we put on last year at Stuart's Landing on August 28, 2010. I can assure you we will take good care of the property and leave it in better condition then when we started.

If you need additional information for this request please contact me at your convenience.

Sincerely,
Live Music & Festivals, Inc.

Ken Jendryka, President

EVENT REPORT

EVENT: Marshall Area Farm Market Coordinator

EVENT LOCATION: City Parking lot west of the Brooks Building/Oaklawn
Dialysis Center

SPONSOR: Jane Dadow

EVENT DATE: Saturday from May 14th to October 29th

EVENT TIMEFRAME: 8 am to noon

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

LANE CLOSURE TIMEFRAME: None

EVENT STREETS AFFECTED: None

DETOUR DETAIL: None

EVENT DETAIL: Area growers and producers will offer locally grown agricultural products. Products must be raised or produced in Michigan by vendors or vendor's families. The Marshall Area Farm Market is required to allow vendor space for the sale of food products produced within the city of Marshall.

COUNCIL NOTIFICATION DATE: March 21, 2011

Date: March 1, 2011

To: The Honorable James Dyer, Mayor, City of Marshall
And Marshall City Council Members

From: Jane Dadow, Marshall Area Farm Market Coordinator

Re: Use of City Parking Lot for Marshall Area Farm Market

This is a request to use the city parking lot west of the Brooks Building/Oaklawn Dialysis Center to hold the Marshall Area Farm Market on Saturday mornings from 8 to noon beginning on May 14, 2011 through October 29, 2011.

The City of Marshall has allowed a group of area growers and producers to offer locally grown agricultural products for the last seven years. Some of the items featured last year at the market included fresh fruits, vegetables, flowers, shrubs, herbs, eggs, honey, baked goods, nuts, dog treats and frozen meats. The only market rule was that all items offered must be raised or produced in Michigan by the vendor or vendor's family and all products must be agricultural or agriculturally related. This allowed the market to be local and focused.

We greatly appreciate the support from Marshall area residents who turn out every Saturday to purchase items from our vendors.

Thank you for your time and consideration.

Jane Dadow

Jane Dadow
Marshall Area Farm Market Coordinator
Ph# 269-781-2728
janedadow@aol.com

Copy to: Tom Tarkiewicz, City Manager and
Diane Larkin, Main Street Manager ✓

EVENT REPORT

EVENT: HOSPITALITY CLASSIC

EVENT LOCATION: MICHIGAN AVENUE, MANSION STREET, NORTH LINDEN STREET, VERONA ROAD, WEST DRIVE, F DRIVE NORTH & NORTH KALAMAZOO AVENUE

SPONSOR: OAKLAWN HOSPITAL

EVENT DATE: SATURDAY, MAY 21, 2011

EVENT TIMEFRAME: 7:30 AM – 10:30 AM

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

LANE CLOSURE TIMEFRAME: 7:00 AM – 11:00 AM

EVENT STREETS AFFECTED: Michigan Avenue from Kalamazoo Avenue to Liberty Street, Mansion Street, Verona Road from Mansion Street to West Drive, West Drive from Verona Road to F Drive North, F Drive North from West Drive to Kalamazoo Avenue and Kalamazoo Avenue from F Drive North to Michigan Avenue. (INTERMITTENT LANE CLOSURES)

DETOUR DETAIL: Eastbound Michigan Avenue lanes will not be detoured or closed. .

Westbound Michigan Avenue will have intermittent lane closures with a signed detour as follows: South on Lincoln Street to Green Street to Sycamore Street to Michigan Avenue.

EVENT DETAIL: Police escort for runners, with assistance from cyclist club. Race route starts on North Kalamazoo Avenue between Michigan Avenue and Prospect Street, then east on Michigan Avenue to Mansion Street, then west to Verona Road to West Drive, then north on West Drive to F Drive North, then east to North Kalamazoo Avenue, then south to the start in front of the Honolulu House. Some of the shorter legs turn from Mansion Street north onto Linden Street, then south on Kalamazoo Avenue to the finish line.

COUNCIL NOTIFICATION DATE: March 21, 2011

EVENT REPORT

EVENT: Memorial Day Parade

EVENT LOCATION: Michigan Avenue

SPONSOR: VFW

EVENT DATE: Monday, May 30, 2011

EVENT TIMEFRAME: 8:30am – 11am

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

ROAD CLOSURE TIMEFRAME: 9am to 11am

EVENT CLOSURE DETAIL: Michigan Avenue from West Drive to Liberty.

DETOUR DETAIL: Eastbound Michigan Avenue will be directed south at West Drive to Hanover Street then east to Kalamazoo Avenue, then north to Green Street, then east to Liberty Street, then north to Michigan Avenue.

Westbound Michigan Avenue will be directed north at Liberty Street to Mansion Street then west to Verona Road then west to West Drive, then south on West Drive to Michigan Avenue.

EVENT DETAIL: Parade will have vehicles and walkers.

COUNCIL NOTIFICATION DATE: March 21, 2011

EVENT REPORT

EVENT: Cruise to the Fountain

EVENT LOCATION: Michigan Avenue

SPONSOR: Marshall Area Chamber of Commerce & CCAIS

EVENT DATE: July 2, 2011

EVENT TIMEFRAME: 5pm to 9pm

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO **DATE: 12/7/11**

ROAD CLOSURE TIMEFRAME: 5pm to 9pm

ROAD CLOSURE DETAIL: Michigan Avenue from West Drive to Liberty Street.

EVENT CLOSURE DETAIL: Michigan Avenue from West Drive to Liberty Street.

DETOUR DETAIL: West bound traffic will be detoured North of Liberty Street, West on Mansion, continue along Verona Road, and South on West Drive back to Michigan Avenue. East bound traffic will be detoured south on Industrial Road, East on Hanover Street, North on Kalamazoo Avenue, East on Green Street, North on Liberty Street back to Michigan Avenue.

EVENT DETAIL: A wave of 50's nostalgia comes into town with this car show!

PARKING PROHIBITION: No on-street parking on Michigan Avenue from Kalamazoo Avenue to Marshall Avenue, Parkview Street and Park Street.

COUNCIL NOTIFICATION DATE: March 21, 2011

EVENT REPORT

EVENT: Independence Day Chicken BBQ

EVENT LOCATION: Brooks Fountain Circle

SPONSOR: Marshall Area Chamber of Commerce

EVENT DATE: July 4, 2011

EVENT TIMEFRAME: 10am – 3pm

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO **DATE:12/7/2010**

ROAD CLOSURE TIMEFRAME: 6:30am – 3pm

ROAD CLOSURE DETAIL: Michigan Avenue from Sycamore Street to Grand Street and Kalamazoo Avenue from Green Street to Mansion Street

EVENT CLOSURE DETAIL: Area surrounding Brooks Memorial Fountain.

DETOUR DETAIL: Eastbound Michigan Avenue will be detoured south on Sycamore Street to Green Street then east on Green Street to Grand Street then north to Michigan Avenue.

Westbound Michigan Avenue will be detoured at Grand Street north to Mansion Street then west on Mansion Street to Sycamore Street then south to Michigan Avenue.

EVENT DETAIL: Band concert, bike & animal parade, and chicken barbeque.

PARKING PROHIBITION: Michigan Avenue from Kalamazoo Avenue to Grand Street

COUNCIL NOTIFICATION DATE: March 21, 2011

EVENT REPORT

EVENT: Blues Fest

EVENT LOCATION: Michigan Avenue & North Eagle Street

SPONSOR: Marshall Main Street

EVENT DATE: July 16, 2011

EVENT TIMEFRAME: 11:00am – 11:00pm

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO **DATE:12/7/11**

ROAD CLOSURE TIMEFRAME: 11am to 11pm

ROAD CLOSURE DETAIL: Michigan Avenue from Grand Street to Madison Street.

EVENT CLOSURE DETAIL: Michigan Avenue from Eagle to Jefferson and Eagle from Michigan Avenue to Mansion

DETOUR DETAIL: Eastbound traffic will be detoured south on Grand street, east on Green Street, and north on Madison Street back to Michigan Avenue. Westbound traffic will be detoured north on Madison Street, west on Mansion Street, south on Grand Street back to Michigan Avenue.

EVENT DETAIL: Marshall Main Street Blues Festival to be held on Saturday, July 17. Great blues bands will be playing throughout the day in downtown historic Marshall. Also included is a beer tent and great food vendors. The main stage will be set up on Michigan Avenue with a secondary stage and beer tent set up on Eagle Street.

PARKING PROHIBITION: No on-street parking on Michigan Avenue from Grand Street to Jefferson Street.

COUNCIL NOTIFICATION DATE: March 21,2011

EVENT REPORT

EVENT: Veteran's Day Ceremony

EVENT LOCATION: Michigan Avenue

SPONSOR: VFW

EVENT DATE: Friday, November 11, 2011

EVENT TIMEFRAME: 11am

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

ROAD CLOSURE TIMEFRAME: 11pm – 11:30pm

EVENT CLOSURE DETAIL: NE quadrant of traffic circle.

DETOUR DETAIL: No posted detour. Traffic will be rerouted temporarily during ceremony on local streets.

EVENT DETAIL: Ceremony to take place at the Veteran's Memorial

COUNCIL NOTIFICATION DATE: March 21, 2011

EVENT REPORT

EVENT: 47th Annual Marshall Christmas Parade

EVENT LOCATION: Michigan Avenue

SPONSOR: Chamber of Commerce

EVENT DATE: Monday, November 28, 2011

EVENT TIMEFRAME: 7pm – 9pm

MDOT PERMIT REQUIRED: YES NO

MDOT PERMIT GRANTED: YES NO

ROAD CLOSURE TIMEFRAME: 5pm to 9pm

EVENT CLOSURE DETAIL: Michigan Avenue from West Drive to Liberty.

DETOUR DETAIL: Eastbound Michigan Avenue will be directed south at West Drive to Hanover Street then east to Kalamazoo Avenue, then north to Green Street, then east to Liberty Street, then north to Michigan Avenue.

Westbound Michigan Avenue will be directed north at Liberty Street to Mansion Street then west to Verona Road then west to West Drive, then south on West Drive to Michigan Avenue.

EVENT DETAIL: Parade will have vehicles and walkers.

COUNCIL NOTIFICATION DATE: March 21, 2011

City of Marshall

323 West Michigan Avenue - Marshall, MI 49068-1578 - Phone (269) 781-5183 - FAX (269) 781-3835



Marshall Town Hall ca: 1857

ADMINISTRATIVE REPORT **March 21, 2011 - City Council Meeting**

REPORT TO: Honorable Mayor and City Council

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

SUBJECT: Recommendation from Planning Commission for proposed changes to Chapter 152:
Sign Ordinance

BACKGROUND: In March of 2010, the Planning Commission began discussing changes to the Sign Ordinance. Research and discussions were completed in December and a public hearing was held on the proposed changes on January 12, 2011. No public was present to speak. Subsequently, Council held a public hearing on February 7, 2011 and referred the ordinance back to Planning Commission for further consideration on the "Animated Sign" portion of the ordinance.

On March 9, 2011, the Planning Commission discussed the Animated Sign portion of the Sign Ordinance again. Under consideration were brightness levels (in nits), rates of display change, and the districts in which this type of signage should be allowed. Commissioner's then identified the reason why businesses choose this particular type of sign: A) to provide information B) to attract customers. The following discussions ensued:

Brightness

The available research pertaining to recommended brightness levels varies greatly. Several different sources on the internet compare this type of signage to the nits that sunlight emits during the day as a way to measure appropriate brightness. Sources considered for brightness level and other issues were the OAAA (Outdoor Advertising Association of America), Vividoptics.com, neoncoreo.com, the IEEE (Institute of Electrical and Electronics Engineers), the U.S. Department of Transportation: Federal Highway Administration, and various case law. Considering that some sources say sunlight is approximately 6,500 nits while others state that it's 5,000 nits, the Planning Commission felt that a level of 2,000 nits for daytime brightness was reasonable. In fact, it seems that a level of 2,000 nits for daytime brightness is on the conservative side as most sources state that levels around 5,000 nits are appropriate for daytime use. When researching night-time brightness levels, again the sources varied in their information. Overall, a regulated level of 500 nits from dusk until close/sunrise was not out of line.

Rate of Change

In the course of researching animated signage, there was no evidence that color contrast affects the perceived rate of display change for a sign. Commissioners discussed the inherent legal risk with trying to regulate content, including color. The U.S. Department of Transportation in a memorandum issued September 25, 2007 suggested that a suitable duration of a message at highway speeds is 8 seconds. Again, the Planning Commission found the regulated rate of display change (10-12 seconds) on the conservative, but acceptable side.

Districts Allowed

During the month of February, both the Design Committee and DDA were given the proposed language for "Animated Sign" and asked whether or not they would like the B-3 to be included as a district that allows this type of signage. Both parties stated that they did not wish to be included in the permitted districts.

The Planning Commission then looked at other districts within the City. It was determined that animated signage should be extended to every commercial district, with the exception of the B-3, because there was no rational basis to deny the signage to one or more particular areas. Commissioners decided that it was not their responsibility to deny certain districts this type of sign but rather to show them how to use the signage appropriately if they were going to choose to have it. In response to this reasoning, it was determined that the following language would be added to Animated Sign:

(4) No animated sign will be allowed in the same yard that directly abuts or is across the street from a residential property.

Overall, the Planning Commission identified 3 over-reaching goals that they were trying to achieve through the creation of the "Animated Sign" language:

- Traffic and pedestrian safety
- Protection of residential properties and neighborhood "feel"
- Maintenance of the aesthetic integrity of the community as a whole

Each of the 3 goals listed above was applied to each piece of regulation in the "Animated Sign" definition. Therefore, upon City Council recommendation, the Planning Commission was successful in pulling together their ideas and identifying solid rationale for this regulation.

MOTION by Collins, supported by Fleming, to submit the amended "Animated Signage" language and districts to City Council for approval. On a voice vote; **MOTION CARRIED.**

Commissioner Stevenson wished to state for the record that he disagreed with expanding the districts in which Animated Signage should be allowed.

On January 12, 2010, the Planning Commission also passed the following motion pertaining to the rest of the ordinance's proposed changes:

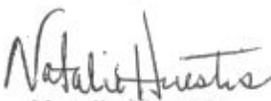
MOTION by Fleming, supported by Burke Smith, to submit the recommend changes to Chapter 152: Sign Ordinance to City Council for approval. On a voice vote; **MOTION CARRIED.**

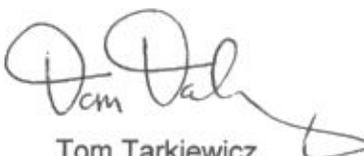
RECOMMENDATION: The Planning Commission recommends that after consideration of the proposed revisions, City Council give approval to the proposed changes to Chapter 152: Sign Ordinance.

FISCAL EFFECTS: None.

ALTERNATIVES: As suggested by Council.

Respectfully submitted,


Natalie Huestis
Director of Community Services


Tom Tarkiewicz
City Manager

**CITY OF MARSHALL
ORDINANCE #-11**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE, CHAPTER 152: SIGN ORDINANCE.

THE CITY OF MARSHALL ORDAINS:

Section 1. That section **§152.02 Definitions and Regulations** of the Marshall City Code, is hereby amended to add the following:

ANIMATED SIGN. A sign, other than a changeable copy sign, whereby the sign itself or the information conveyed incorporates or involves action, motion, or the appearance of action or motion, such as flashing lights, color changes, moving parts, reflective materials, and overall has video-like features. Animated signs must meet all industry standards for brightness and illumination. The illumination average shall be limited to 2,000 nits during daylight hours, and shall be reduced to 500 nits from a half hour before sunset to a half hour after sunrise. Animated signs are permitted to change copy at not less than the following intervals:

Speed Limit	Rate of Display Change
Less than 45 mph	12 seconds
45 mph or greater	10 seconds

- (1) The animated area of a sign shall not exceed 25% of the maximum sign area permitted.
- (2) The animated area of a sign shall be counted as part of the total sign area allowed.
- (3) Animated signs shall be turned off from midnight-5 a.m.; excluding businesses open during this time period.
- (4) No animated sign will be allowed in the same yard that directly abuts or is across the street from a residential property.

Section 1a. That section **§152.02 Definitions and Regulations** of the Marshall City Code, is hereby amended to read as follows:

CHANGEABLE COPY SIGN. A temporary sign or permanent sign, electrical or non-electrical, on which the copy changes automatically or is designed to allow the copy to be changed manually while the surface of the sign remains unchanged, such as electronic time and temperature units or reader boards with changeable letters. A sign on which the copy changes more than four (4) times an hour shall be considered an animated sign. Time and temperature displays and fuel price displays shall be considered changeable copy signs rather than animated signs regardless of the number of changes per day. A **CHANGEABLE COPY SIGN** is subject to the following regulations:

- (1) The changeable copy sign area of a sign shall not exceed 25% of the maximum sign area permitted; and
- (2) The changeable copy sign area shall be counted as part of the total sign area allowed.

INCIDENTAL SIGN. A temporary sign, emblem or decal informing the public of goods, facilities, services or employment opportunities available on the premises. An **INCIDENTAL SIGN** is subject to the following regulations:

- (1) One incidental sign per property;
- (2) Not permitted if there is an Animated Sign on the property;
- (3) Maximum sign height of six feet; and
- (4) Sign area of six square feet or less per side for a single or double faced sign.

WALL SIGN. A permanent sign painted on, incorporated in, or attached directly to a building wall, window, or projecting architectural feature with the exposed face of the sign in a plane parallel to the building wall, window, or projecting architectural feature. A mural shall not be considered a **WALL SIGN**. A **WALL SIGN** is subject to the following regulations:

- (1) Shall not project outward more than 12 inches;
- (2) Shall not extend above the top of the building's wall or beyond the edge of the building;
- (3) Each property is permitted one or more wall signs and/or marquee signs with the total sign area of:
 - (a) Not greater than the maximum sign area permitted for the property;
 - (b) Not more than 5% of the first floor wall area of the wall to which it is attached to for buildings in the MFRD, MHPD, and POSD districts.
 - (c) Not more than 25% of the first floor wall areas of the wall to which it is attached to for buildings in the B-1, B-2, B-3, B-4, I-1, I-2, and FS districts. (The total sign area of all wall signs and/or marquee signs in a business center may exceed the maximum sign area permitted for a single property, but is governed by the percentage limits above and the maximum sign area permitted applied to each establishment's building frontage.)

Section 1b. That section **§152.02 Definitions and Regulations** of the Marshall City Code, is hereby amended to delete the following:

ELECTRONIC MESSAGE SIGN. A type of changeable copy sign on which the copy changes automatically. An **ELECTRONIC MESSAGE SIGN** is subject to the regulation of a changeable copy sign.

INTERCHANGE APPROACH AREA or IAA. The part of West Michigan Avenue (BL-94) within the city corporate limits east of I-69 and west of the intersection of Michigan Avenue and Fountain Street as it existed on the date of adoption of this chapter: approximately 3,000 feet east of I-69.

MOVING SIGN. A temporary sign or permanent sign or portions of a sign which moves by any means or a sign that gives the appearance of movement in any manner except for changeable copy signs, barber pole signs, banner signs, pennant signs, flag signs, national flag of the United State of America, State of Michigan flags, or City of Marshall municipal flags.

Section 2. That section **§152.04 General Sign Provisions (J)** of the Marshall City Code, is hereby amended to read as follows:

(J) No sign shall employ any flashing, moving, oscillating, blinking or variable intensity light, except as otherwise provided for in this ordinance.

Section 2a. That section **§152.04 General Sign Provisions (R)** of the Marshall City Code, is hereby amended to read as follows:

(I) No sign shall employ animated or moving parts, except for animated signs, banner signs, barber pole signs, changeable copy signs, flag signs and pennant signs.

(J) No sign shall employ any flashing, moving, oscillating, blinking or variable intensity light, except as otherwise provided for in this ordinance.

(R) (1) The maximum sign area permitted on premises, not including permitted ground signs, temporary signs, freestanding signs, business center signs and off-premise signs, barber pole signs, pennant signs and window signs of less than 25% of the window area as shown in the chart below.

(2) In the B-3 zoning district, a public side entrance(s) shall be entitled to an additional 50% of sign area on that side of the building.

(3) A public rear entrance(s) in the B-3 zoning district shall be entitled to an additional 100% of sign area on the rear of the building unless the premises also has a public side entrance(s) in which event the rear shall be limited to an additional 75% of sign area.

	R-1, R-2, R-3	MFRD, MHPD	POSD	B-3	B-2, B-4, FS	I-1, I-2	HCHSD
Maximum sign area	NA	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.

Section 3. That section **§152.07 Signs Prohibited (J)** for the Marshall City Code, is hereby amended to read as follows:

(J) Temporary signage is prohibited on any parcel where a permit for an Animated Sign has been issued and the Animated Sign has been constructed.

Section 3a. That section **§152.07 Signs Prohibited (K)** for the Marshall City Code, is hereby added to read as follows:

(K) Any signs not permitted under this chapter.

Section 4. That section **§152.31 Appendix A: Type and Location of signs: Prohibited Signs** of the Marshall City Code, is hereby amended to read as follows:

§152.31 Permitted according to district.

The following types of signs shall be permitted in the following districts and in limited number, as defined and in accordance with all sign regulations as stated in chapter 152. If a particular sign is not named as permitted (with or without a permit) in a district, it shall not be allowed in that district:

1. Signs permitted in all districts:

a. No Permit Required

- i. Auction Sale
- ii. Banner
- iii. Construction
 - 1. Less than 6 square feet in area and less than 6 feet in height
- iv. Directional
 - 1. On premises, up to 4 square feet in area
 - 2. Off premises, temporary signs
- v. Estate Sale
- vi. Flag
- vii. Garage/Yard Sale
- viii. Nameplate
- ix. Political
- x. Real Estate
- xi. Special Event
- xii. Warning

b. Permit Required

- i. Construction
 - 1. More than 6 square feet in area or more than 6 feet in height
- ii. Externally Illuminated

2. Signs prohibited in all districts:

- a. Abandoned
- b. Balloon
- c. Portable
- d. Roof
- e. Vehicle

3. One and Two-Family Residential Districts (R-1, R-2, R-3):

- a. *Permit Required*
 - i. Institutional
 - ii. Special Land Use

4. Multiple Family and Manufactured Housing Park Districts (MFRD and MHPD):

- a. *Permit Required*
 - i. Ground
 - ii. Institutional
 - iii. Marquee
 - iv. Special Land Use
 - v. Wall

5. Professional Office Service District (POSD):

- a. *Permit Required*
 - i. Animated
 - ii. Awning
 - iii. Barber Pole
 - iv. Changeable Copy
 - v. Directional
 - 1. On premises, larger than 4 square feet in area
 - 2. Off premises, permanent
 - vi. Ground

- vii. Illuminated Internally
- viii. Marquee
- ix. Wall

b. No Permit Required

- i. Incidental
- ii. Mural
- iii. Water Tower
- iv. Window

6. Central Business District (B-3):

a. Permit Required

- i. Awning
- ii. Barber Pole
- iii. Changeable Copy
- iv. Directional
 - 1. On premises, larger than 4 square feet in area
 - 2. Off premises, permanent
- v. Illuminated Internally
- vi. Marquee
- vii. Perpendicular
- viii. Projecting Business Signs
- ix. Wall

b. No Permit Required

- i. Fuel Price
- ii. Incidental
- iii. Mural
- iv. Vending
- v. Water Tower
- vi. Window

7. Business Districts (B-2, B-4, and FS):

a. Permit Required

- i. Animated
- ii. Awning
- iii. Barber Pole
- iv. Business Center
- v. Changeable Copy
- vi. Directional
 - 1. On premises, larger than 4 square feet in area
 - 2. Off premises, permanent
- vii. Ground
- viii. Illuminated Internally
- ix. Marquee
- x. Pennant
- xi. Wall

b. No Permit Required

- i. Fuel Price
- ii. Incidental
- iii. Mural
- iv. Vending
- v. Water Tower
- vi. Window

8. Industrial (I-1 and I-2):

a. Permit Required

- i. Animated
- ii. Awning
- iii. Barber Pole
- iv. Billboard
- v. Business Center

- vi. Changeable Copy
- vii. Directional
 - 1. On premises, larger than 4 square feet in area
 - 2. Off premises, permanent
- viii. Ground
- ix. Illuminated Internally
- x. Marquee
- xi. Wall

b. No Permit Required

- i. Fuel Price
- ii. Incidental
- iii. Mural
- iv. Vending
- v. Water Tower
- vi. Window

Section 5. 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 6. This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this _____ day of _____, 2011.

James L Dyer, MAYOR

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 an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on March 21, 2011, 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.

Sandra Bird, CLERK-TREASURER

City of Marshall

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Marshall Town Hall ca. 1857

ADMINISTRATIVE REPORT March 21, 2011 - CITY COUNCIL MEETING

REPORT TO: Honorable Mayor and City Council
FROM: Tom Tarkiewicz, City Manager
SUBJECT: Sale of High Street vacant lot to Oaklawn Hospital

BACKGROUND: The City had received one bid from Oaklawn Hospital for \$63,000, for the purchase of City owned vacant lot on High Street between Prospect Street and Forest Street. Parcel No. 003-528-00 is on the west side of High Street and is 132' wide and 297' deep and contains 0.9 acres. The lot originally contained a water department standpipe.

Section 2.20 Sale of Real Property of the City Charter states:

The city council shall sell real property by resolution, subject to the provisions of Section 2.08 (f). However, if the value of the property exceeds \$4.00 per capita according to the last official U.S. census, two public readings must be made at two regularly scheduled meetings of the city council. Final adoption of the resolution may be made at the meetings wherein the second public reading of the resolution has been made.

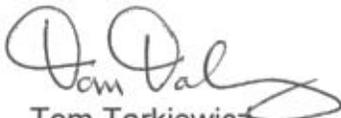
Section 2.08 (f) would not apply since this lot is not a city park, parking lot, or cemetery.

RECOMMENDATION: It is recommended that the City Council accept the bid from Oaklawn Hospital for \$63,000 for the High Street vacant lot and direct the City Attorney to prepare all pertinent sales documents.

FISCAL EFFECTS: \$63,000 from the sale.

ALTERNATIVES: As suggested by the Council.

Respectfully submitted,


Tom Tarkiewicz
City Manager



CITY OF MARSHALL, MICHIGAN
RESOLUTION #2011-_____
City of Marshall Resolution

To Sell High Street Real Property

WHEREAS, the City of Marshall's Charter Section 2.20 requires that City Council shall sell real property by resolution following two public readings; and

WHEREAS, the City has published a notice of intent to sell land bearing parcel number 003-528-00, vacant real property east of High Street, between Prospect Street and Forest Street; and

WHEREAS, the City has invited bids and received bids from three parties interested in purchasing said real property; and

WHEREAS, the bid received from Oaklawn Hospital in the amount of \$63,000.00 is the high bid and otherwise meets the qualifications required by the City related to the bidding process;

THEREFORE, BE IT RESOLVED, that the City of Marshall shall convey parcel number 003-528-00 to Oaklawn Hospital by warranty deed, in its "as is" condition, upon receipt of \$63,000.00, consideration, plus the cost of land survey, warranty deed and title search, subject to the terms and conditions contained within the notice of intent to sell real property.

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 March 21, 2011 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

City of Marshall

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ADMINISTRATIVE REPORT March 21, 2011 - CITY COUNCIL MEETING

REPORT TO: Honorable Mayor and City Council

FROM: Carl Fedders, Director of Public Services
Tom Tarkiewicz, City Manager

SUBJECT: Spring Trash Pick Up

BACKGROUND: The City of Marshall has historically provided a Spring Trash Pick up for its residents in late May at an annual cost of \$10,000. For the past five years the service has averaged a collection of 72 tons. As part of the 2011 budget process the service was eliminated with the intention of providing the service if funds became available.

At this time there appears to be no offsetting savings that will allow this service. The FY 2011 General Fund forecasted budget is approximately (\$43,500) deficit.

If approved the pick up will be scheduled for May 23rd which is the Monday following the community wide garage sale. Once informal quotes are collected it is not anticipated that any further council action would be necessary.

RECOMMENDATION: It is recommended that the City Council approve the use of general fund reserves for the use of the 2011 spring trash pick up.

FISCAL EFFECTS: To increase the funding and amend the General Fund Streets Department Contracted Services expenditure budget line item 101-441-820.00 by \$10,000.00 for the spring trash pick up service. The source of funding will come from the use of prior year General Fund balance reserves.

ALTERNATIVES: As suggested by the Council.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Carl Fedders'.

Carl Fedders
Director of Public Services

A handwritten signature in cursive script, appearing to read 'Tom Tarkiewicz'.

Tom Tarkiewicz
City Manager



City of Marshall



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ADMINISTRATIVE REPORT March 21, 2011 - City Council Meeting

REPORT TO: Honorable Mayor and City Council Members

FROM: Thomas Tarkiewicz, City Manager

SUBJECT: AMP Power Supply Agreement: 2015-2020

BACKGROUND: At the November 17, 2010 meeting, the Council adopted a resolution with AMP for 24/7 block of 2,500 kW of replacement energy. AMP has entered into a Purchase Power Agreement (PPA) with Morgan Stanley for 100 MW of energy for a six year period (2015-2020). MSCPA has reviewed the member needs and the needs are for a 5/16 block. Since AMP was over subscribed, they will honor our request to withdraw from this agreement.

RECOMMENDATION: It is recommended that the City Council by adopting the resolution authorize the Clerk Treasurer to sign the Rescinding 2010-A Long Term AMPGS Replacement Energy Purchase Power Schedule and Supplement with AMP for 2,500 kW of energy.

FISCAL EFFECTS: None.

ALTERNATIVES: As suggested by Council

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas Tarkiewicz', with a long, sweeping flourish extending to the right.

Thomas Tarkiewicz
City Manager



**RESOLUTION
RESCINDING 2010-A LONG TERM AMPGS REPLACEMENT ENERGY PURCHASE
POWER SCHEDULE AND SUPPLEMENT THERETO
AND OTHER MATTERS**

CITY OF MARSHALL

COUNTY OF CALHOUN, STATE OF MICHIGAN

RESOLUTION NO. _____

WHEREAS, the City of Marshall (the "City") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, the City is a member of the Michigan South Central Power Agency ("MSCPA") and coordinates with, and receives all of its power supply needs from, MSCPA; and

WHEREAS, the MSCPA and the City have established and entered into contracts with American Municipal Power, Inc. ("AMP") to allow the MSCPA and the City to acquire power and energy through or from AMP; and

WHEREAS, AMP, MSCPA and the City have entered into a Master Services Agreement ("MSA"), which sets forth general terms and conditions under which, among other things, AMP may sell and MSCPA and the City may purchase electric capacity and energy and other services through Schedules to the MSA; and

WHEREAS, MSCPA and the City were collectively participants in the American Municipal Power Generating Station Project ("AMPGS Project"), which was terminated as a coal fired project by the AMPGS participants and the AMP Board of Trustees on November 24, 2009; and

WHEREAS, the AMPGS participants and the AMP Board of Trustees determined to investigate the replacement of the AMPGS coal project with, among other possibilities, power purchases from the softened wholesale market; and

WHEREAS, as a result of AMP's investigation the AMPGS participants and the AMP Board of Trustees directed AMP to secure a 100 MW block of purchased energy for the period January 1,

2015 through December 31, 2020, on a “take and pay” basis at favorable cost, through arrangements with Morgan Stanley Capital Group, Inc. (“MSCGI”); and

WHEREAS, to accomplish the sale by AMP and purchase by MSCPA and the City of AMPGS replacement energy from MSCGI, AMP drafted and submitted to the City for approval an AMPGS Replacement Energy Schedule (the “Schedule”) and related documents; and

WHEREAS, in order to properly reflect to role of MSCPA and the relationship of MSCPA and the City, the AMPGS Replacement Energy Schedule was supplemented by a Supplement to 2010-A Long-Term Replacement Energy Schedule (the “Supplement”) among AMP, MSCPA and the City; and

WHEREAS, the MSCPA and the City desired to replace a portion of the energy that would have been available from the AMPGS Project, and to that end the City approved on November 22, 2010 a Resolution authorizing and directing the Mayor and the City Clerk to execute on behalf of the City a final form of the AMPGS Replacement Energy Schedule and related documents, which agreement, as supplemented by the Supplement, was executed; and

WHEREAS, the AMP offer to purchase AMPGS replacement energy supplied by MSCGI is now over-subscribed by AMPGS participants; and

WHEREAS, after November 22, 2010, MSCPA and the City determined that MSCPA and the City do not require AMPGS replacement energy to be supplied by MSCGI under the Schedule and Supplement; and

WHEREAS, AMP has informed MSCPA and the City that should MSCPA and the City desire to be released from any obligations of MSCPA and the City to purchase AMPGS replacement energy supplied by MSCGI pursuant to the AMPGS Replacement Energy Schedule and related documents, MSCPA and the City may be so released; and

WHEREAS, MSCPA and the City have determined that it is desirable to rescind the AMPGS Replacement Energy Schedule and related documents;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor and City Clerk and the General Manager of MSCPA are hereby directed to notify AMP in accordance with this resolution that MSCPA and the City desire to rescind the Schedule and Supplement, and are hereby further directed to enter into an agreement with AMP to memorialize the understanding between MSCPA, the City and AMP

regarding MSCPA's and the City's decision to rescind the Schedule and Supplement, and memorialize AMP's release of MSCPA and the City from any obligations of MSCPA and the City to purchase AMPGS replacement energy supplied by MSCGI pursuant to the Schedule and the Supplement.

2. If any section, subsection, paragraph, clause or provision or any part thereof of this resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this resolution shall be unaffected by such adjudication and all the remaining provisions of this resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.
3. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby rescinded.
4. This resolution shall take effect at the earliest date allowed by law.

RESOLUTION DECLARED ADOPTED.

Clerk

ND: 4852-1239-9880, v. 1

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City of Marshall

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ADMINISTRATIVE REPORT March 21, 2011 - CITY COUNCIL MEETING

TO: City Council Members
FROM: Mayor James L. Dyer
SUBJECT: Re-Appointment to the Zoning Board of Appeals

BACKGROUND: The terms of David Ryan and Dave DeGraw, currently serving on the Zoning Board of Appeals, expired on March 10, 2011. Mr. Ryan and Mr. DeGraw have expressed the desire for re-appointment.

RECOMMENDATION: It is recommended that David Ryan and Dave DeGraw be re-appointed to the Zoning Board of Appeals for three-year terms expiring on March 10, 2014.

FISCAL EFFECTS: None.

ALTERNATIVES: As suggested by City Council.

Respectfully submitted,



James L. Dyer
Mayor



City of Marshall

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ADMINISTRATIVE REPORT March 21, 2011 - CITY COUNCIL MEETING

TO: City Council Members

FROM: Mayor James L. Dyer

SUBJECT: Local Advisory Council

BACKGROUND: At the February 7, 2011 City Council Meeting, Carl Gibson was appointed to serve on the Local Advisory Council. It was discovered that the present members of this council term's are expired. Currently the members of this Council are Mary Lu Cartey, Marian Johnson, and Carl Gibson.

RECOMMENDATION: It is recommended that the following members be reappointed to the Local Advisory Council with the term expiration listed:

Mary Lu Cartey	February 1, 2012
Mary Ann Churchill	February 1, 2013
Carl Gibson	February 1, 2014

FISCAL EFFECTS: None.

ALTERNATIVES: As suggested by City Council.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James L. Dyer', with a long horizontal flourish extending to the right.

James L. Dyer
Mayor



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ADMINISTRATIVE REPORT **MARCH 21, 2011 - CITY COUNCIL MEETING**

TO: City Council Members
FROM: James L. Dyer, Mayor
SUBJECT: District Library Board Vacancy

BACKGROUND: A seat on the District Library Board will become vacant on March 31, 2011. Interested candidates should fill out a Boards/Commissions application and submit it to the Clerk's office by Wednesday, March 30, 2011. Applications are available on the City's website, www.cityofmarshall.com, or in the Clerk's office.

FISCAL EFFECTS: None.

ALTERNATIVES: As suggested by City Council.

Respectfully submitted,

James L. Dyer
Mayor

