

REGULAR MEETING – DECEMBER 10, 2013

The regular meeting of the Common Council of the City of Marshall was held on December 10, 2013 in the Professional Development Room at the Marshall Middle School, 401 South Saratoga Street. The meeting was called to order at 5:30 P.M. by Mayor Byrnes. In addition to Byrnes the following members were in attendance: Larry Doom, Mike Boedigheimer, John DeCramer, and Ellayne Conyers. Absent: Jennie Hulsizer. Council Member Glenn Bayerkohler arrived late. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; Harry Weilage, Director of Community Services; Rob Yant, Director of Public Safety; Marc Klaith, Fire Chief; Sheila Dubs, Human Resource Coordinator; Mary Tate, Administrative Assistant for Community Services; Melinda Kawalek, in-resident Green Corps Representative; Cathy Lee, Executive Assistant; Jane DeVries, Deputy City Clerk; and Thomas M. Meulebroeck, Finance Director/City Clerk.

The Pledge of Allegiance was recited at this time.

It was the general consensus that the agenda be approved as presented.

CONSIDER APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 26, 2013 AND THE MINUTES OF THE WORK SESSION HELD ON NOVEMBER 26, 2013:

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the minutes of the regular meeting held on November 26, 2013 be approved as corrected and that the minutes of the work session held on November 26, 2013 be approved as filed with each member and that the reading of the same be waived'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

PRESENTATION OF THE GREEN STEP PROGRAM:

Will Thomas, Green Step Committee member, and Melinda Kawalek, in-resident Green Corps representative, who is working on Green Step's 5 goals to help Marshall achieve Step 3 in the Green Step Program as Marshall continues their quest to be a "Green City" were in attendance at the meeting to highlight the recent poster contest promoting America Recycles Day which was November 15th. Over 50 posters entries were received and judged by an independent panel.

Mayor Bob Byrnes presented the winners with Marshall Community Service's gift certificates. The winners were: Grades 1-2 - Josh Leibfried (1st); Madeline Prah (2nd) and Thomas Hanson (3rd); Grades 3-4 - Cecily Aufenthie (1st); Remy Dolson (2nd) and Logan Waltz (3rd).

PUBLIC HEARING AND CONSIDERATION OF ORDINANCE AMENDING CHAPTER 70-TAXATION RELATED TO THE CONVENTION AND VISITORS BUREAU:

This was the date and time set for a public hearing on the ordinance amending Chapter 70-Taxation related to the Convention and Visitors Bureau. Ben Martig, City Administrator, reviewed the changes to the CVB Lodging tax ordinance that are being recommended in an effort to create more diversity on the board of directors, add transparency to board activities, increase opportunity for membership from the public, add fiduciary responsibility, and increase cooperation with partner organizations including the City of Marshall and Marshall Area Chamber of Commerce. The ordinance changes are recommended to be made effective January

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1, 2014. The existing board would remain in effect until the new board members are appointed. This is presumably to occur at the first council meeting in January. Advertisement of board applications would be made as soon as council approved the ordinance and scheduling of interviews in advance of the first meeting. If necessary, the appointments could come later. It is proposed that concurrent with these changes there will be bylaw changes for the CVB and also a change in administrative service delivery in which the CVB would contract with the Chamber of Commerce for staffing. It is intended that these would occur in January of 2014 as well. The existing CVB Director would transition to become a Chamber employee under the supervision of the Chamber Director. This is a similar model as the change that was made with the Marshall Economic Development Authority. The Chamber of Commerce Board of Directors has lent its unanimous support of the changes. The CVB Board has met on the issue as well and Administrator Martig has made amendments that have addressed their concerns raised on the ordinance. The CVB board met on Thursday, November 21 and did not have any objection to the ordinance that is presented with the amendment included that the lodging operators provide their three representatives to the board.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'to close the public hearing'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **NEW** motion 'the adoption of ORDINANCE NUMBER 683, SECOND SERIES, which is an ordinance Amending Chapter 70-Taxation related to the Convention and Visitors Bureau and summary ordinance for publication'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

SCHWAN'S CORP I ADDITION – PUBLIC HEARING AND APPROVAL OF PRELIMINARY PLAT:

This was the date and time set for a public hearing on the preliminary plat of Schwan's Corp I Addition. Glenn Olson, Director of Public Works/City Engineer, indicated that the owner of the property is requesting to plat the area presently described with multiple lots and blocks requiring many separate tax parcel identifications and separate tax statements. This subdivision will combine these parcels resulting in fewer taxable parcels while retaining the ability to subdivide the newly created lot areas. Copies of the proposed subdivision have been sent to the local utility companies for their review and comment and those comments/requirements, if any, have been incorporated into the plat.

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'that the Council close the public hearing and approve the Preliminary Plat of Schwan's Corp I Addition'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF CONSENT AGENDA:

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'Consider Approval of Consent Agenda'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

The approval of a Taxi Cab License for Downtown DD LLD dba Marshall Taxi. The fee for this license is \$100.00 for the first cab and \$25.00 for each additional cab for a total of \$150.00 for three vehicles for 2014.

That the following bills and project payments be authorized for payment: ACCOUNTS PAYABLE, Voucher No. 86883 through 87014.

Authorization be granted to the Department of Public Safety to dispose of surplus City Property of four (4) vehicles and forty-one (41) guns. These vehicles will be auctioned on-line at the state site or will be taken to Alter for disposal. The guns will either be taken to Alter or enter into a trade agreement with an authorized federal gun dealer.

The approval of the amended wage schedule for temporary/seasonal employees to be effective January 1, 2014.

The introduction of an ordinance granting Bridget's of Marshall, Inc., dba Dickey's Barbecue Pit an intoxicating malt liquor on-sale license.

CONSIDER AUTHORIZATION TO APPROVE TOWING AND STORAGE AGREEMENT BETWEEN THE CITY OF MARSHALL AND SOUTHWEST TOWING AND RECOVERY:

Bids were received, opened and read at the regular meeting held on November 26, 2013. Following discussion the motion was made to table the award of bids to the regular meeting to be held on December 10, 2013. DeCramer moved, Doom seconded, to remove the award of bids for Towing and Storage from the table. All voted in favor of the motion.

Dennis Simpson, City Attorney, indicated that proposals were solicited for two year towing and storage contract with the City for the years 2014 and 2015. Proposals were received from:

Southwest Towing and Recovery	BCM Towing and Recovery
Marshall, Minnesota	Tyler, Minnesota
\$65.00 per tow	\$55.00 per tow
\$20.00 per day for inside storage	\$20.00 per day for inside storage
\$20.00 per day for outside storage	\$10.00 per day for outside storage

Southwest Towing and Recovery included in their bid the provision to pay back to the City some of the costs incurred by the City. Specifically, if a towed vehicle that has been categorized as abandoned by the Public Safety Department, they will donate 100% of the towing and storage money back to the City of Marshall.

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Mr. Simpson indicated that the bid as submitted from Southwest Towing & Recovery is confusing and ambiguous at best. The confusion results from the attachment to the bid form from Southwest Towing & Recovery. The literal reading of that attachment would indicate that the City of Marshall would pay zero dollars to Southwest Towing & Recovery for the towing and storage of vehicles. Based upon that lack of clarity and ambiguity, Mr. Simpson indicated that this bid is not in compliance with the bid specifications, and as such has have previously advised that the City should reject Southwest Towing & Recovery bid as non-compliant with bid specifications.

The two bids that have been received do pose interesting legal consequences which necessitate a thorough review of Minnesota contract bidding law. The most essential for the creation of a contract requires that the parties have mutually understood contract terms pursuant to an offer and acceptance of those terms. The City of Marshall has solicited bids requesting that the bidders set forth the specific terms under which the particular bidder would provide service to the City. Therefore, each bidder's bid is deemed to be an offer to provide services to the City. One towing and storage bid contains the traditional towing rate and storage rate pursuant to the proposal specifications. The second bid under consideration appears to contain an ambiguous donation component to the traditional towing and storage bid.

Acceptance of the terms of an offer by the City are governed by Minn. Stat. §471.345. The Uniform Municipal Contracting Law sets forth processes and procedures by which municipal contracts must be followed. In this case, it appears that the contracts to be entered into between City and the towing/storage service amounts to an expenditure by the City of less than \$25,000 per year. Such a contract between the City and service provider may be made either upon quotation or upon the open market, all in the discretion of the governing body (note that Marshall Ordinance 74-63 (7) indicates "The towing operator shall set the towing and storage rates pursuant to a competitive bidding process.) Therefore, the City has elected to proceed with a competitive bidding procedure for the selection of a towing and storage provider for the next two year period of time.

Both submitted bids are unique and separate and each bid attempts to address the towing and storage fees to be charged for each service. However, Mr. Simpson continues to be of the belief that the bid submitted from Southwest Towing & Recovery is ambiguous and does not clearly set forth actual cost to be incurred by the City.

A bidder can submit any criteria that it is desires to be considered in its offer for services. The offers (although ambiguous) are back to the City and the City can accept one or the other of the offers. The acceptance would create the contract that would then be finalized in written form as outlined in the proposal.

It is the City Attorney's recommendation that both bids be rejected and that the City once again solicit offers to provide towing and storage services. It is recommended that bidders be offered the opportunity to donate some or all of their services based upon a clearly defined and understood set of rules regarding donation factor in any bid offer.

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Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **SUBSTITUTE** motion 'that the bid and contract for Towing and Storage be awarded to Southwest Towing and Recovery and acknowledge reimbursement of storage and towing for abandoned vehicles'. The contract provides for the following rates: \$65.00 per tow; \$20.00 per day for inside or outside storage and that Southwest Towing and Recovery will donate back to the City within seven working days of the payment from the City of Marshall the cost relating to the tow and storage of vehicles that have been categorized as abandoned by the Public Safety Department not picked up by the customer Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 – 1**, with Bayerkohler voting no.

PUBLIC HEARING HELD AT 6:30 P.M. FOR THE PRESENTATION OF PROPOSED 2014 CITY BUDGET AND 2013 PROPERTY TAX LEVY COLLECTIBLE IN 2014:

This was the date and time set for a public hearing on the 2014 Budget and Levy. Ben Martig, City Administrator, provided a review of the 2014 Budget and Tax Levy. The purpose of this public hearing was to hear any comments from the City Council and from the general public in regard to the proposed budget and tax levy payable in the year 2014. Mr. Martig provided a power point presentation which included:

Proposed Tax Levy; Sample Tax Statements; How Property Tax Rates are Determined; Residential Property Tax Comparison 2013-2014; Commercial/Industrial Tax Comparison 2013-2014; History of Local (Tax Capacity Rates) for City-County-School; City of Marshall Total Tax Capacity Rate; City of Marshall Tax Capacity 2004-2014; General Fund Revenues; General Fund Revenue Comparisons 2012-2014; 2014 Proposed Use of Property Tax Revenue; LGA Payment History; How is my 2014 "City" Tax Dollar (\$1.00) Spent?; General Fund FY 2014 Expenditures; General Fund Expenditure Comparisons 2013-2014; General Fund Expenditure Breakdown by Type 2013 vs. 2014; Marshall-Lyon County Library; Economic Development; and Enterprise Funds.

Council Member Bayerkohler questioned the budgets for the Enterprise Funds.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'to close the public hearing'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Mayor Byrnes called for a 5-minute recess at 7:07 P.M.

CONSIDERATION OF DONATION AGREEMENT FOR THE CONSTRUCTION OF THE MARSHALL-LYON COUNTY LIBRARY CHILDREN'S LIBRARY:

Ben Martig, City Administrator, reviewed the Donation Agreement for the Marshall-Lyon County Library Children's Addition. This agreement proposes that Robert L. and Phyllis Carr, as trustees of the Carr Family Foundation, donate the construction of the Children's Library Addition referred to as "phase 2" to complete the library project vision for the building. A couple items of clarification that do not require contractual changes: A. The general contractor, presumably Robert L. Carr, Co., will be the "permittee" for the city building permit but the City will pay the fee and as owner give authorization to apply for the city permit. This also relates to other permits that may apply such as electrical that is with the State. The general contractor should apply and be granted a permit but the City will provide the fee. B. Although the

agreement references the cost estimated at \$1.65 million, the purpose for listing the cost estimate is to establish the size and scope of the project which is also illustrated in the concept floor plan and drawings as referenced in the square footage of the agreement. These items together illustrate the scope of the project to be further refined and approved as the formal design is completed with construction documents. C. Related to the donee responsibility under 5.2.f. and 5.2.g., the amount and scope of these items to be included are completely at the discretion of the “donee” as defined in the agreement so that the donor will not be stipulating any requirements as it relates to the landscaping and furnishings, fixtures and equipment. The library board would be leading these recommendations with funding to be determined. If any portions were requested to be funded by the County or City these entities would need to approve the dollars by separate action.

Library Chairperson, Will Thomas, and Library Director, Holly Martin-Huffman, were in attendance at the meeting and provided background information and how the new addition will relate to the library operations.

Mr. Carr has contracted with TSP to begin design work for the project and would like to begin construction in spring of 2014. Dependent on weather, the new facility could reasonably be opening in October of 2014.

Member (**Mike Boedigheimer**) moved, Member (**Ellayne Conyers**) seconded to approve the **ORIGINAL** motion 'the adoption of RESOLUTION NUMBER 3964, SECOND SERIES, which is a Resolution Accepting the Donation and Authorizing the Approval and Signature of the "Donation Agreement" for the Children's Addition of the Marshall-Lyon County Library with Robert L. Carr and Phyllis V. Carr, as trustees of the Carr Family Foundation'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER ADOPTION OF RESOLUTION ACCEPTING DONATIONS FOR A VETERAN'S MEMORIAL:

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'the adoption of RESOLUTION NUMBER 3965, SECOND SERIES accepting the Donation of Personal Property for a Veteran's Memorial in the amount of approximately \$4,000 from the family of William “Bill” Versaevel'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried. 6 - 0**

CONSIDER RENEWAL OF TRANSPORTATION AGREEMENT FOR 2014 WITH WESTERN COMMUNITY ACTION:

Cathleen Almich, Western Community Action, reviewed the agreement between Western Community Action, Inc., and the City of Marshall for transit operations within the City of Marshall for the period January 1, 2014 through December 31, 2014. The local share requested in 2014 is \$28,000 to replace two buses, contingent on receiving 80% funding from MN/DOT. The estimated cost for each vehicle is \$70,000.

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Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'the approval of the Transportation Agreement with Western Community Action, Inc., for January 1, 2014 through December 31, 2014'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0** Abstain: **1**. The motion **Passed 5 – 0 – 1** with DeCramer abstaining.

CONSIDER CHANGE ORDER ON NEW FIRE DEPARTMENT RURAL PUMPER:

Ben Martig, City Administrator, reviewed the change order for the new Fire Department Rural Pumper in the amount of \$6,841.

Member (**Glenn Bayerkohler**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'to approve the change order with Custom Fire Apparatus, Inc., in the amount of \$6,841.00 for the new Fire Department Rural Pumper'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF A CITY OF MARSHALL WELLNESS INCENTIVE:

Cathy Lee, Executive Assistant, was in attendance at the meeting to speak on behalf of the Wellness Committee. Ms. Lee indicated that the Wellness Committee is requesting approval of one day of sick pay to be converted to eight hours paid time off for employees that successfully complete the wellness incentive. Staff has discussed the weight loss program with other businesses to get an idea of what has been positive and effective for them. The committee has learned from the Health Assessment that obesity is the No. 1 concern with the City of Marshall employees. The Personnel Committee reviewed the wellness incentive on Monday, November 25, 2013.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'approval of one day of sick pay to be converted to eight hours paid time off for employees that successfully complete the wellness incentive in 2014'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **1**. The motion **Passed 5 – 1**, with Boedigheimer voting no.

REVIEW 2014 MARSHALL CAPSTONE ENDOWMENT FUND AWARD:

Ben Martig, City Administrator, indicated that staff is recommending to fund \$3,001 (Corporate Patriot) for the traveling Vietnam Memorial. Due to copyright issues staff could not include photos but they can see them at (www.us/pictures.htm) or staff will provide an example of a community booklet that was done by a city in 2013 and will be the exact wall. The local group is looking at a similar marketing booklet for Marshall and the City funds would help ensure that could be afforded along with also securing the cost of the wall.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'approve the City of Marshall Capstone Endowment Fund 2014 appropriation award of \$3,001 (Corporate Patriot) for the traveling Vietnam Memorial for Marshall in 2014'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF THE ANNUAL RENEWAL FOR THE ON-SALE INTOXICATING LIQUOR LICENSES, SUNDAY ON-SALE INTOXICATING LIQUOR LICENSES, WINE LICENSES, BREWER TAPROOM LICENSE, OFF-SALE INTOXICATING LIQUOR LICENSE, 3.2 MALT LIQUOR BEVERAGE ON-SALE LICENSE, 3.2 MALT BEVERAGE OFF-SALE LICENSE, TOBACCO LICENSE AND UNDER 21 EXEMPTION FOR 2014:

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'the approval of the following On-Sale Intoxicating Liquor Licenses, Sunday On-Sale Intoxicating Liquor Licenses, Wine Licenses, Brewer Taproom License, Off-Sale Intoxicating Liquor License, 3.2 Malt Liquor Beverage On-Sale License, 3.2 Malt Beverage Off-Sale License, Tobacco License and Under 21 Exemption for 2014 contingent upon all requirements being completed'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried. 6 - 0**

ON-SALE INTOXICATING LIQUOR LICENSE (\$4,200 per year)

American Legion	Applebee's Neighborhood Grill & Bar
Caldo Italian Kitchen	Eagles Club
El Rancho #2	Fuzzy's Bar & Grill
Gambler	Hitching Post Eatery and Saloon
Mariachi Fiesta	Marshall Bowl
Marshall Golf Club	Ramada
TK's Steakhouse and Pappy's	Varsity Pub
Wooden Nickel	

ON-SALE INTOXICATING SUNDAY LIQUOR LICENSE (\$200 per year)

American Legion	Applebee's Neighborhood Grill & Bar
Brau Brothers Brewing	Caldo Italian Kitchen
Dickey's Barbecue Pit	Eagles Club
El Rancho #2	Fuzzy's Bar & Grill
Hitching Post Eatery and Saloon	Hunan Lion
Mariachi Fiesta	Marshall Bowl
Marshall Golf Club	Ramada
TK's Steakhouse and Pappy's	Varsity Pub
Wooden Nickel	

TAPROOM (\$250 per year)

Brau Brothers Brewing

WINE LICENSE (\$800 per year)

Dickey's Barbecue Pit
Hunan Lion

3.2 MALT BEVERAGE ON-SALE LICENSE (\$250 per year)

Dickey's Barbecue Pit	Hunan Lion
Pizza Ranch	Prairie Event Center

MICRO/SMALL BREWER OFF-SALE LIQUOR LICENSE - GROWLERS

Brau Brothers Brewery

3.2 MALT BEVERAGE OFF-SALE LICENSE (\$90 per year)

Casey's General Store	Cattoor's
County Fair	Express Way of Marshall
Freedom Value Center	Hy-Vee Food Store
Hy-Vee Gas Station	La Mexicana
Prairie Pride Cooperative – Ampride West	Wal-Mart

TOBACCO LICENSE (\$75 per year)

American Legion	Casey's General Store
Cattoor's	County Fair
Express Way of Marshall	Freedom Value Center
Hy-Vee Food Store	Hy-Vee Gas Station
Marshall Golf Club	Marshall Liquor Store
Marshall Tobacco Inc.	Prairie Pride Cooperative – Ampride Main
Prairie Pride Cooperative – Ampride West	Super America
Wal-Mart	

UNDER 21 EXEMPTION

Applebee's Neighborhood Grill & Bar	Hitching Post Eatery and Saloon
Marshall Bowl	Marshall Golf Club
TK's Steakhouse and Pappy's	

CONSIDER APPROVAL OF A TEMPORARY ON-SALE INTOXICATING LIQUOR LICENSE FOR SMSU FOUNDATION:

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'the approval of a Temporary On-Sale Liquor License for Southwest Minnesota State University Foundation to use on February 14, 2014 at the SMSU Conference Center, 1501 State Street, Marshall, Minnesota'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0 Abstain: 1. The motion **Passed 5 – 0 – 1** with Bayerkohler abstaining.

CONSIDER APPROVAL OF A TEMPORARY ON-SALE LIQUOR LICENSE FOR FRIENDS OF THE ORCHESTRA LTD:

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'the approval of a Temporary On-Sale Liquor License for the Friends of the Orchestra LTD to use on December 18, 2013 at Holy Redeemer Church, 503 West Lyon Street, Marshall, Minnesota'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF A TEMPORARY ON-SALE LIQUOR LICENSE FOR MARSHALL AREA CHAMBER OF COMMERCE:

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'the approval of a Temporary On-Sale Liquor License for the Marshall Area Chamber of Commerce to use on January 13, 2014 at Hooguh, 208 West Main Street, Marshall, Minnesota'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

PROJECT Z03: NORTH 5TH STREET WALK BRIDGE REPLACEMENT PROJECT – CONSIDER FINAL CHANGE ORDER NO. 1 AND ACKNOWLEDGEMENT OF FINAL PAY REQUEST NO. 3.

Glenn Olson, Director of Public Works/City Engineer, reviewed the Final Change Order No. 1 and the acknowledgement of the final pay request no. 3 for North 5th Street Walk Bridge Replacement Project Z03. The project consists of the installation of two abutments for the bridge and a separate contract for the supply and delivery of the bridge at North 5th Street. This final pay request is for the installation of two abutments for the bridge portion of the project. The items on the Final Reconciling Change Order are the result of final measurements and changes in item quantities during construction. All work has been completed in accordance with the specifications.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that Council approve Change Order No. 1 (Final) with Sherbrooke Turf resulting in a contract decrease in the amount of \$3,618.89 and acknowledgement of Final Pay Request (No. 3) in the amount of \$2,210.88 for the North 5th Street Walk Bridge Replacement Project Z03'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

WWTF/BNSF RAILWAY COMPANY LEASE AGREEMENT:

Glenn Olson, Director of Public Works/City Engineer, reviewed the Lease Agreement with The Burlington Northern/Santa Fe Railway Company (BNSF). BNSF has a track switching spur located behind the Wastewater Treatment Facility. The only good access to the tracks for them to maintain this switch is by driving through the Wastewater Treatment Facility (WWTF). BNSF have been doing this since the plant was built. When the City built the Northwest Industrial Park Lift Station the City needed to install the wastewater forcemain on railroad right of way. BNSF is charging the City an annual lease for this Right-of-Way (ROW) lease. Staff has negotiated an access agreement with BNSF to bill them for the same amount annually that they charge the City for the ROW lease. The annual ROW lease is in the amount of \$1854.00 per year with a 3% increase each year. For record keeping purposes BNSF wants to have the paper trail of the lease and the access agreement billed annually. The City will bill them back the amount that they will be billing the City annually. There have never been any issues with them using the access through the plant. The agreement has been reviewed by the City Attorney and he recommends approval.

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Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the City Council approves entering into the Access Agreement between the City of Marshall and the BNSF Railway Company'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

COMMISSION/BOARD LIAISON REPORTS:

Reports by the Mayor and Council Members of the various Boards and Commissions were presented at this time:

Byrnes Regional Development Commission will be meeting on December 12th; Regional Radio Board will be meeting on December 13th; SW MN Amateur Sports Center held their monthly meeting – it was indicated that the amount of sales tax is more than what was originally expected.

Doom Personnel Committee items were acted on earlier in the meeting.

Bayerkohler Housing Commission met on December 9th but Bayerkohler was unable to attend; Planning Commission will be meeting on December 11th.

DeCramer EDA held a special meeting to finalize the development agreement with Action Manufacturing, Inc.; this agreement is continuing to be worked on.

Boedigheimer No report.

Conyers Community Services Advisory Board meeting was cancelled due to the weather.

COUNCILMEMBER INDIVIDUAL ITEMS:

There were no additional comments from the Council Members.

STAFF REPORTS:

Ben Martig, City Administrator, indicated that Library Board has voted to cancel the agreement with Plum Creek; therefore the City may need to take action. Attorney Simpson will review.

Glenn Olson, Director of Public Works/City Engineer, indicated that the Wastewater Treatment Facility is working with a consultant on the replacement of the clarifier. Staff is working on the reissuance of the NEPS permit.

Dennis Simpson, City Attorney, indicated that he is working to finalize the contract with Action Manufacturing Inc.

PENDING ITEMS:

City Administrator Martig indicated that he needs to update this list.

INFORMATION ONLY:

There were no questions on the information items.

**CONSIDERATION TO MOVE TO CLOSED SESSION TO DISCUSS ATTORNEY
CLIENT PRIVILEGE:**

Doom moved, DeCramer seconded, that the council go into closed session to discuss Attorney Client Privilege. All voted in favor of the motion.

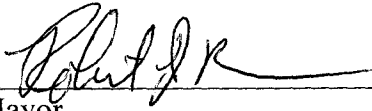
The Council went into closed session at 8:15 P.M. to discuss Attorney Client Privilege. Those present at the closed session included: Byrnes, Doom, Bayerkohler, DeCramer, Boedigheimer and Conyers. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; and Thomas M. Meulebroeck, Finance Director/City Clerk.

The council came out of closed session at 8:27 P.M.

UPCOMING MEETINGS:

There were no questions on the upcoming meeting list.

Doom moved, Boedigheimer seconded, that the meeting be adjourned. All voted aye.



Mayor

ATTEST:



Finance Director/City Clerk