

**CITY OF MARSHALL  
CITY COUNCIL MEETING  
M I N U T E S  
Monday, November 07, 2022**

The regular meeting of the Common Council of the City of Marshall was held November 7, 2022, at City Hall, 344 West Main Street. The meeting was called to order at 5:30 P.M. by Mayor Robert Byrnes. In addition to Byrnes the following members were in attendance: Amanda Schroeder, Steve Meister, John DeCramer, Russ Labat and James Lozinski. Absent: Craig Schafer. Staff present included: Sharon Hanson, City Administrator; Dennis Simpson, City Attorney; Jason Anderson, Director of Public Works/City Engineer; E.J. Moberg, Director of Administrative Services; Ilya Gutman, Plans Examiner and Steven Anderson, City Clerk.

The Pledge of Allegiance was recited at this time.

**Consider Approval of the Minutes from the Regular Meeting Held on October 25, 2022**

No corrections were made to the minutes.

Motion made by Councilmember DeCramer, Seconded by Councilmember Lozinski to approve the minutes from October 25, 2022. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Conduct Public Hearing of Ordinance Amendment to Chapter 86, Article VI-1, Section 86-165 Structures in Residential Districts**

Ilya Gutman, Plans Examiner, presided over the public hearing. Gutman explained that the current ordinance prohibits exposed fasteners on residential houses. The Legislative and Ordinance Committee met October 11<sup>th</sup> and recommended that fasteners be allowed on low sloped roofs. Councilmember DeCramer and Lozinski had a discussion regarding the harsh weather in Minnesota and roofing materials.

Motion made by Councilmember Meister, Seconded by Councilmember Lozinski to close the public hearing. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

Councilmember Schroeder stated that the Planning Commission only had questions with fasteners on siding. No concerns were brought up with roofing.

Motion made by Councilmember Lozinski, Seconded by Councilmember Schroeder to approve the ordinance as written. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. Voting Nay: Councilmember DeCramer. The motion **Carried. 5-1**

**Project ST-008 / SAP No. 139-121-004: Channel Parkway Pavement Replacement Project - Consider Rejection of Bids Received and Authorize Redesign of the Project**

Jason Anderson, Director of Public Works/City Engineer explained the project which consisted of replacement of existing bituminous pavement with concrete pavement, replacement of curb and gutter, and ADA pedestrian ramps along Channel Parkway.

On October 20, 2022, four bids were received. The apparent low bid was from Hulstein Excavating Inc. of Edgerton, Minnesota, in the amount of \$3,790,693.55. The engineer's estimate was approximately \$3,123,900. City staff is proposing to utilize a \$1.25M Local Road Improvement Program (LRIP) grant, in addition to Municipal State Aid System (MSAS) funds to pay for this project. Due to prices coming in over city budget, staff is recommending rejecting all bids received on this project and to re-evaluate the type of surface for this project. The city's current MSAS fund balance is (\$2,226,410.24). Paying for this project with MSAS funds would require long-term debt to be issued with payments coming from the MSAS account. With rising costs MSAS funding is not keeping up with system needs.

City staff would propose a significant mill and overlay of Channel Parkway in lieu of the concrete surfacing to reduce costs while still meeting the intent of the LRIP (local road improvement) grant that we have for this project. Staff has had conversations with our MnDOT State Aid Engineer and with the MnDOT State Programs Engineer to review our LRIP grant to ensure that a mill and overlay project would be grant eligible. Confirmation was received that we could proceed in this manner, provided the project has a minimum 10-year lifespan. Staff believes the mill and overlay will provide a 15–20-year lifespan. Councilmember Lozinski added that the Public Improvement and Transportation Committee met and is also recommending rejecting all bids.

Motion made by Councilmember Lozinski, Seconded by Councilmember Labat to reject bids received and authorize staff to redesign the project. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

### **Approval of the Consent Agenda**

Councilmember DeCramer requested that item number 8) 4M Resolution Authorizing Membership in the 4M Fund be removed from the consent agenda.

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer to approve the remaining consent items. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Schroeder. The motion **Carried. 6-0.**

- Consider Approval of a Temporary On-Sale Liquor License for the Convention and Visitors Bureau.
- Consider Approval of a Temporary On-Sale Intoxicating Liquor License for Friends of the Orchestra LTD
- Consider Approval of a Permit for Alcoholic Beverages at City-Owned Facilities
- Wastewater Treatment Facilities Improvement Project - Consider Payment of Invoice 0298785 (Final) to Bolton & Menk, Inc.
- Consider Approval of the Bills/Project Payments

### **4M Resolution Authorizing Membership in the 4M Fund**

Councilmember DeCramer wanted clarification on how the funds can be invested and if it still meets state requirements. Moberg confirmed that the investments will still meet state requirements.

Motion made by Councilmember DeCramer, Seconded by Councilmember Labat to approve the resolution. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

### **City of Marshall & Marshall Municipal Utilities Partnership Agreement**

Dave Schelkoph, General Manager for Marshall Municipal Utilities, presented the 2023 partnership agreement. As MMU is exempt from paying property tax a Payment in Lieu of Tax (PILOT) is remitted instead. The PILOT calculation is based on the average kilowatt hours(kWh) sales using the most recent audited ten (10) years' information to allow for a more consistent payment. The PILOT is calculated at a rate of \$0.0014 multiplied by the average kWh sales. Councilmember DeCramer noted that MMU is mandated at the state level to reduce energy consumption each year, which in turn reduces sales.

MMU proposed to remove the limits placed on the \$1million held in MMU reserves associated with Commerce Park and have the reserves available for the city to use toward a future EDA project. A new agreement was proposed to supersede the current Water Area Cost (WAC) charges that were established in 2003 and updated in 2006. The intent of the WAC was to provide orderly development of MMU's water infrastructure without causing expansion costs to be placed on existing water customers. The new "Water Main Development Agreement" will work with developers in extending sewer systems into a new development and the city of Marshall to determine minimum requirements.

Motion made by Councilmember DeCramer, Seconded by Councilmember Schroeder to approve the partnership agreement. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Resolution Appointing Pamela Whitmore and the law firm of Kennedy and Graven as City Attorney; Matthew B. Gross as Prosecuting Attorney; and Dennis H. Simpson as Special Counsel**

The City Council, at the May 24, 2022, City Council meeting, authorized the Request for Proposal (RFPs) for the following legal services: City Attorney General Counsel; Criminal Services; and Local Land Use. The City received four (4) proposals for General Counsel, three (3) proposals for Local Land Use, and one (1) proposal for Criminal Prosecution. The proposals were received from Quarnstrom and Doering, Pemberton Law, Kennedy and Graven and Flaherty and Hood. The Committee met to review City Attorney RFPs on August 17th and conducted interviews September 9th and September 13th with three of the four firms.

Recommended bids were as follows:

Kennedy and Graven- City Attorney: 2023 \$65,400; 2024 \$67,380

Quarnstrom and Doering- Criminal Prosecution: 2023 \$68,215.52; 2024 \$68,215.52

Quarnstrom and Doering- Special Counsel: 2023 \$30,000; 2024 \$30,000

Councilmember Labat requested clarification on how often Pamela Whitmore from Kenedy and Graven would be in attendance. Whitmore indicated that she would be in-person for the day at one council meeting per month. Labat also asked for clarification on attendance for staff or commission meetings. Whitmore confirmed that would be as needed for attendance. There was an additional question on a blank item in the agreement with Quarnstrom and Doering.

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer to approve the resolution. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Consider Charter Commission Revisions**

On October 19, 2022, the Charter Commission met and considered revisions to two Articles: Councilmember Terms of Office and City Attorney. Language was brought forth to align councilmember terms of office with Minnesota State Statute and provide better clarity on the when the councilmember term starts. Language was brought forth to revise City Attorney language to make it more consistent with legal representation afforded a client, in this case the city. After discussion, the Commission approved the revisions as included in the Council packet and now makes a recommendation to Council to approve, by ordinance, the Charter Amendments proposed. A public hearing will be set for December 13.

Motion made by Councilmember Schroeder, Seconded by Councilmember Meister to receive the recommendation from the Charter Commission and to proceed with a public hearing. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Project PK-001: Independence Park Trail Replacement Project – Consider Change Order No. 3 (Final) and Acknowledgement of Final Pay Request No. 6.**

This project consisted of the following: Replacement of the existing bituminous trail in Independence Park. This project included grading, gravel base, concrete sidewalk, and other miscellaneous work. Change Order No. 3 (Final) resulted in a contract decrease in the amount of \$10,863.99, and the final contract amount was \$371,735.61.

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer to approve the change order and final pay request. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat,

Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Project ST-023: W. Lyon Street (College to 1<sup>st</sup>) Reconstruction Project - Consider Change Order No. 2 (Final) and Acknowledgement of Final Pay Request (No. 4)**

The project limits included: W. Lyon Street (E. College Drive to N. 1<sup>st</sup> Street). The proposed project was originally included in the scope of the Z82 (N. 1<sup>st</sup>/Redwood/Marshall) Reconstruction Project constructed in 2021. In consideration of the unknown status regarding the potential development of the Block 11 property, the block of W. Lyon Street between E. College Drive and N. 1<sup>st</sup> Street was removed from the scope of the project. The items on Change Order No. 2 (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. The contractor has submitted MN State IC-134 (Withholding Affidavit) Forms. After processing of this Final Pay Request (No. 4), the contractor will be paid in full, including all retainage. Change Order No. 2 (Final) resulted in a contract decrease in the amount of \$7,976.20. The original contract amount was \$409,645.10. The final contract amount is \$402,830.25, resulting in a net contract decrease of \$6,814.85.

Motion made by Councilmember Schroeder, Seconded by Councilmember DeCramer to approve the change order and final pay request. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Project ST-024: Baldwin Parking Lot Reconstruction Lot Project - Consider Change Order No. 2 (Final) and Acknowledgement of Final Pay Request (No. 1)**

This project consisted of reconstruction of the Baldwin Parking Lot adjacent to W. Lyon Street, pavement removal and concrete paved surfacing. The Baldwin Parking Lot is located behind City Hall. All work has been completed in accordance with the specifications. The contractor has submitted MN State IC-134 (Withholding Affidavit) Forms. After processing of this Final Pay Request (No. 1), the contractor will be paid in full, including all retainage. Change Order No. 2 (Final) results in a contract decrease in the amount of \$2,366.53. The original contract amount was \$159,515.77. The final contract amount is \$157,649.24, resulting in a net contract decrease of \$1,866.53.

Motion made by Councilmember Labat, Seconded by Councilmember Lozinski to approve the change order and final pay request. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

**Commission/Board Liaison Reports**

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| Byrnes    | Regional Development Loan Fund approved revolving loan fund and continues to be active in the region. The fire relief association quarterly meeting was updated by Bremer Bank on their investments. |
| Schafer   | Absent.  |
| Meister   | No report.   |
| Schroeder | No report.   |
| DeCramer  | MMU went over the partnership agreement that was presented. DEI received a presentation on the MN Health Equity Network.   |
| Labat     | CVB held their first retreat and discussed ways to bring people and events to the area.  |

**Councilmember Individual Items**

Councilmember Lozinski and DeCramer encouraged citizens to get out and vote.

Councilmember Labat attended the rental ordinance meeting and commented on the discussions that were held.

**City Administrator**

The DEI Commission worked with city staff to host election information on the city website.

**Director of Public Works/City Engineer**

Airport Commission met and talked about hanger rental rates. The RRFB signs are up but not completely operational, but the issues are being addressed.

**City Attorney**

No report.

**Administrative Brief**

There were no questions on the Administrative Brief.

**Information Only**

Mayor Byrnes pointed out that the PCGQR letters were submitted and is the City of Marshall's formal request to have our census numbers re-evaluated. Councilmember Labat had a question regarding residency and the census date.

**Upcoming Meetings**

There were no questions on the Upcoming Meetings.

**Adjourn**

At 6:42 Motion made by Councilmember Schroeder, Seconded by Councilmember DeCramer to adjourn the meeting. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski, Councilmember Schroeder. The motion **Carried. 6-0.**

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Mayor

Attest:

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City Clerk