

**OWOSSO CITY COUNCIL**

**FEBRUARY 16, 2010**

**5:30 P.M.**

**PRESIDING OFFICER:** MAYOR BENJAMIN R. FREDERICK

**OPENING PRAYER:** SHELVA CEBULSKI

**PLEDGE OF ALLEGIANCE:** MAYOR PRO-TEM CINDY S. POPOVITCH

**PRESENT:** Mayor Benjamin R. Frederick, Mayor Pro-Tem Cindy S. Popovitch, Councilpersons Thomas B. Cook, Michael J. Erfourth, Christopher T. Eveleth, Joni M. Forster, and Gary W. Martenis.

**ABSENT:** None.

**APPROVE AGENDA**

Motion by Councilperson Eveleth to approve the agenda as presented with the removal of Item of Business 7. Washington Street Streetscape and the addition of Discussion 2. Planning Session.

Motion supported by Mayor Pro-Tem Popovitch and concurred in by unanimous vote.

**APPROVAL OF THE MINUTES OF REGULAR MEETING OF FEBRUARY 1, 2010**

Motion by Councilperson Forster to approve the Minutes of the Regular Meeting of February 1, 2010 as presented.

Motion supported by Councilperson Martenis and concurred in by unanimous vote.

**APPROVAL OF THE MINUTES OF SPECIAL MEETING OF FEBRUARY 8, 2010**

Motion by Councilperson Cook to approve the Minutes of the Special Meeting of February 8, 2010 as presented.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

**INTERIM CITY MANAGER INTERVIEWS**

Human Resources Director Jessica Unangst indicated that background checks had been performed on all three candidates and had come back satisfactory. Per Council's request she went on to indicate each candidate's position on salary, whether they plan to live in the community, and their availability. Each candidate indicated they would accept the current City Manager's pay without benefits.

There was discussion as to how to conduct each interview. It was decided each Council member would ask one question and one possible follow up question to each candidate.

**INTERVIEW – MR. D. WAYNE O'NEAL**

Mr. O'Neal, current partner in Global Communication Solutions and former County Administrator for Hendry County, Florida was interviewed from approximately 5:45 p.m. until approximately 6:15 p.m.

**INTERVIEW – MR. GEORGE STRAND**

Mr. Strand, former Manager for the Village of Middleville and the City of Battle Creek, was interviewed from approximately 6:20 p.m. until approximately 6:45 p.m.

There was a brief recess from 6:47 p.m. until 6:53 p.m.

**INTERVIEW – MR. DONALD CRAWFORD**

Mr. Crawford, former City Manager for Hamtramck, Michigan and Farmer City, Illinois, was interviewed from approximately 6:55 p.m. until approximately 7:30 p.m.

There was a brief recess from 7:30 p.m. until 7:40 p.m.

**SPECIAL PRESENTATION**

**MAYORAL PROCLAMATION**

Mayor Frederick, with the help of former Mayors Robertson and Bruff, delivered the following proclamation recognizing Joseph A. Fivas for his service to the City.

**A Proclamation of the Mayor's Office of the City of Owosso, Michigan  
Recognizing the Distinguished Public Service of**

**JOSEPH A. FIVAS**

**WHEREAS**, Joseph A. Fivas began his service to the City of Owosso in October of 2007 after a State-wide search for a new City Manager; and

**WHEREAS**, Joe has gone above and beyond to provide excellent service to the Citizens of the City of Owosso, listening to and addressing every concern of citizens and stakeholders in the community; and

**WHEREAS**, Joe took the reins of the City during a trying time, navigating the City through very difficult budgetary challenges; and

**WHEREAS**, Joe has gone about his job with fervor, organizing and attending countless meetings, working late into the night and dismissing the idea that weekends are for resting; and

**WHEREAS**, Joe has used his talents to touch many different areas of the City, modernizing City services, bringing additional grant monies to the community, and spurring visible activity in the downtown; and

**WHEREAS**, it is the intent of this Office that Joe's Dedicated and Distinguished Public Service be recognized.

**NOW, THEREFORE, BE IT PROCLAIMED** that I, Benjamin R. Frederick, Mayor of the City of Owosso, on behalf of the citizens of Owosso, hereby recognize and thank Joe for his dedicated service to the Owosso community and further express our sincere wishes to Joe and his family as they move on to new opportunities in North Carolina.

Proclaimed this 16<sup>th</sup> day of February, 2010.

There were many well wishes from those in attendance.

**INTERIM CITY MANAGER DISCUSSION (CONTINUED)**

Council noted that all three candidates had their strengths.

Motion by Mayor Pro-Tem Popovitch to offer and negotiate with Donald Crawford for the interim City Manager position.

Motion supported by Councilperson Cook.

Councilperson Martenis noted his desire to hire the internal candidate had not changed.

Roll Call Vote.

AYES: Councilpersons Erfourth, Cook, Eveleth, Mayor Pro-Tem Popovitch, and Mayor Frederick.

NAYS: Councilpersons Forster and Martenis.

City Attorney Brown and HR Director Unangst will come back to Council with a proposed contract.

HR Director Unangst went on to update Council on the pursuit for a search firm. She indicated interviews had been scheduled for three firms on March 15<sup>th</sup> at 7:30.

**PUBLIC HEARINGS**

**GRANT CLOSEOUT – CURWOOD CASTLE PARK AND RIVERWALK IMPROVEMENT PROJECTS**

A public hearing was conducted receive citizen comment regarding the close-out of the Vibrant Small Cities Initiative grant for the Curwood Castle Park and the Riverwalk Infrastructure Improvement Projects.

There were no citizen comments.

Motion by Councilperson Eveleth to officially close out VSCI Projects 200775V-1 and 200775V-2 per HUD and MSHDA requirements.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Martenis, Forster, Mayor Pro-Tem Popovitch, Councilpersons Erfourth, Eveleth, Cook, and Mayor Frederick.

NAYS: None.

### **CITIZEN COMMENTS AND QUESTIONS**

Lincoln High School Student body President Justin McNamara delivered an update of the activities of the Student Council including a battle of the bands, donating blood at a recent blood drive and the first tournament championship for the basketball team. He was thanked for coming to the meeting and was asked what the Council could do for the students at Lincoln. He responded by saying Lincoln High students have always suffered from a negative perception in the community and he hoped that opinion would change based on how they represent themselves in the community. Mayor Frederick noted that Council would love to participate and be a part of the success at Lincoln High.

Suzanne Carpenter, 120 North Washington Street, indicated she felt she was mischaracterized at the last Council meeting and she felt the petition signatures she collected were discounted. She went on to say that all the signers of her petition were business owners or managers and that the proposed streetscape project was not appropriate for the architecture of the downtown.

Owosso Community Players Executive Director Linda Keenan thanked the City and City Manager Fivas for all of their efforts in helping with the Lebowsky Center rebuild project. She went on to say that bids for the façade project would be opened later in the week and fundraising efforts continue.

Cable Commission member Christopher Hardwick indicated he felt that the City purchase of equipment would be perfect for the success of the cable channel. He went on to say there was great value in the programming that is currently being played on the channel and that he has been working hard on an integrated schedule and was disappointed that the last cable meeting deteriorated to a point where he could not present the schedule. He said he loves serving the community through his service on the Commission but feels the Commission has lost effectiveness as it now stands and recommended its dissolution.

Shelva Cebulski, 1243 Marion Street, commended the DPW for their quick removal of the snow after a recent snow storm. She also congratulated Cheryl Peterson on her new position with the Red Cross and thanked City Manager Fivas for all of his work for the City.

James Hardwick, 813 North Shiawassee Street, indicated he was one of the pioneers of the cable channel over 20 years ago and things ran smoothly until about 2 years ago. He expressed concern that all of the work and money he put into the effort would go to waste if the channel were to go black. He asked the Council to consider keeping things the way they were under City Manager Guetschow.

Gale Porter, 644 North Park Street, indicated that his sister had greatly enjoyed the Christian programming on channel 95 before she passed away. He went on to say he was very touched by what he saw and felt it was balanced in regard to religious programming.

Cable Commission Chairman James Gutting gave a brief history of the difficulties with the cable channel noting the City's equipment is old and outdated. He went on to say that he is working on putting together a temporary broadcast system for use after OCTS ceases to broadcast March 1<sup>st</sup>. In regard to religious programming he indicated his desire is not to limit the number of religious based programs but to disperse the programming throughout the day and throughout the week so programs are not repeated so many times each day. Lastly he indicated he felt that it would not be a good idea to contract with OCTS at this point and the City should exert more control over the station. He said he is looking forward to making the station an asset for the entire community.

Yvonne Hardwick, 416 Prindle Street, defended KoK and its operation of the channel in the past saying they have played many public programs over the years and were good stewards of what little equipment they had. She went on to say that she felt KoK had represented the City well and that people in the community benefit from their programming. She asked the City to cooperate in the cable effort not just take over.

Thomas Manke, 2912 West M-21, thanked the DPW for its quick removal of snow after the last snow storm.

Laura Day, 731 West Stewart Street, indicated that she provides programming for KoK and is thankful for the opportunity to share her beliefs with others. She went on to say that she felt programs other than religious programs need to be broadcast on channel 95 but no one is turning anything in resulting in what looks like an overload of religious based programming. She was fearful the City would limit religious programming and asked that her viewpoint not be cut off.

Frank Day, 731 West Stewart Street, indicated he has lots of positive feedback on the programs played on channel 95 and that programs need to be played multiple times to hit the biggest

audience. He said it would be a travesty to lose the opportunity to communicate with the public and he hoped the OCTS ultimatum could be used as a springboard to move forward.

The 30 minute time limit was reached.

Motion by Councilperson Eveleth to extend the Citizen Comments and Questions period by 12 minutes.

Motion supported by Councilperson Martenis and concurred in by unanimous vote.

David Gingrich, 7933 Wildcat Road, Ovid, indicated that he contributes programming to KoK and has heard there are a lot of shut-ins that really appreciate the Christian programming. He hoped that everything could be worked out because it would be a great loss to the City if the channel went black.

Scott Schneider, 1946 Owosso Avenue, indicated he provides programming for KoK and he became open to a Christian life in part because of the programming he saw on channel 95. He also said that times are tight and the City should not buy its own equipment if functional equipment exists in town already.

Eddie Urban, 601 Glenwood Avenue, indicated he would like to have a TV guide for channel 95 so he would know when programs of interest come on. He went on to say that City Manager Fivas has done a great job and he will miss him. Lastly, he said he hit his head on a crank at the Middle School and asked that the area be padded.

Councilperson Cook invited everyone to the OCP fundraiser this weekend featuring Blue Dahlia. He said he has tickets available for interested parties.

Mayor Frederick indicated it was a pleasure to be involved in the Main Street visioning forum.

Councilperson Martenis asked about the cost of repeat offenses for parking on the street overnight. It was noted that should a person exceed 10 tickets in a month they can be fined \$100.

He also inquired about burning going on in Westown as some people in the area have been bothered by smoke. Tom Manke noted that there is a group cooking outdoors and providing free food for people in the area. Councilperson Martenis suggested using a gas grill to cook the food, Mr. Manke indicated he was following the rules in using wood and would continue to do so.

Councilperson Martenis asked that anyone having knowledge of a rental property that is not registered could contact him. Lastly he noted that the Parks and Recreation Commission will have a BMX expert present for their next meeting and would be looking at the possibility of establishing a dog park as well.

Mayor Pro-Tem Popovitch indicated the Planning Commission had not met in recent months due to a lack of business. She asked for a Council directive for the Commission.

Councilperson Erfourth indicated that he had read a letter to the editor in the Argus that claimed he supported MMR taking over EMS services in the City. He said he had not advocated any specific position but was simply asking that the conversation take place, saying it would be a disservice not to have the discussion.

### **CITY MANAGER REPORT**

City Manager Fivas noted he felt conflicted as this would be his last regular meeting here in Owosso. He went on to detail a number of accomplishments that took place under his tenure.

He said he would have a preliminary budget put together for Saturday's meeting. He hoped for feedback from Council during that meeting so that he could get close to a final product so the budget is not left completely undone before he leaves. Lastly he thanked everyone for everything and said he was reluctant to leave as he wanted to see some specific projects through.

The Council recessed from 9:22 p.m. to 9:36 p.m.

### **CONSENT AGENDA**

Motion by Councilperson Martenis to approve the Consent Agenda as follows:

Repair Authorization. Authorize pump repair contract with Layne Christensen for Wastewater Pump T2E on a cost basis not to exceed \$10,419.40 and further authorize payment up to that amount after completion.

Provisional Mayoral Appointment. Consider the provisional appointment of Sally Sue Gale to the Board of Review until another member is permanently appointed.

Warrant No. 398. Accept Warrant No. 398 as follows:

<b>Vendor</b>	<b>Description</b>	<b>Fund</b>	<b>Amount</b>
Johnson Controls, Inc	Planned Service Agreement 02/01/2010 – 07/31/2010	General, Water & Historical	\$10,973.00
Netarx, LLC	Network Engineering Support January 2010	General	\$7,616.00
Brown & Stewart, PC	Professional Services 01/12/2010 – 02/08/2010	General	\$9,139.52
Michigan Municipal Risk Management Authority	Building and Property Insurance 07/01/2009 – 06/30/2010	General	\$274,840.00

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Cook, Martenis, Mayor Pro-Tem Popovitch,  
Councilpersons Erfourth, Forster, Eveleth, and Mayor Frederick.

NAYS: None.

### **ITEMS OF BUSINESS**

#### **DEVELOPMENT DISCUSSION - ARMORY**

The Granger Group representatives Jake Chapman and Greg Markvluer were on hand to present a proposal to redevelop the Armory to house offices for the Michigan Department of Human Services and the Department of State. They indicated that while they do not currently have the bid for the State offices they are the winning bidder for the Armory itself and hoped to see a decision by the State within the next 30 days. They had come to Council to discuss the State's parking concerns with the proposal. The State has requested dedicated parking for approximately 100 employees and 90 customers. Messrs. Chapman and Markvluer proposed using the parking lots north and south of the Armory as well as the dirt parking lot across the river near Curwood Castle Park. They indicated all the lots would be dedicated parking during the week but would be open to the public on weekends, thereby allowing the Farmer's Market to continue operations in the parking lot south of the Armory. It was noted the lots in question would provide approximately 130 dedicated spots.

There was discussion regarding expansion and pavement of the lot across the river, deed restrictions on the Chamber of Commerce property, who will be financing the proposed project (Granger Group), concern with disrupting current parking, using Brownfield TIF funds to aid the project, and what would happen should the State back out from the lease. Mr. Markvluer indicated Granger would be open to exploring the ideas and concerns presented by Council, but they first needed to show the State there is adequate parking for the site.

Motion by Councilperson Erfourth to indicate Council's support for the proposed Armory redevelopment project and a desire to consider efforts to accommodate the needs of the project.

Motion supported by Councilperson Eveleth.

Roll Call Vote.

AYES: Mayor Pro-Tem Popovitch, Councilpersons Forster, Cook, Eveleth, Erfourth,  
Martenis, and Mayor Frederick.

NAYS: None.

#### **MINUTES CORRECTION**

City Clerk Amy K. Kohagen gave a brief history of the item at hand saying the original ordinance had been adopted in May of 1999 with a sunset date of June 2003. The item came up for review in May of 2003 to consider the removal of the sunset date provision. The memo presented to Council at that time recommended the removal of the provision but it was discovered the minutes and ordinance book do not reflect this. City Clerk Kohagen went on to say that she had spoken to then Community Development Director Philip Hathaway and he recollected the reason the ordinance was brought before Council in 2003 was to remove the sunset date.

Councilperson Cook noted his conflict of interest in this item as he is the partial owner of a sign business and the ordinance in question deals directly with requirements for signage. City Attorney Brown noted his agreement with Councilperson Cook's abstention from the vote.

Motion by Councilperson Eveleth to authorize correction to the May 19, 2003 Council meeting minutes and Ordinance No. 627 by removing references to a sunset date of June 30, 2003.

Motion supported by Councilperson Erfourth.

Roll Call Vote.

AYES: Councilpersons Forster, Martenis, Erfourth, Mayor Pro-Tem Popovitch, Councilperson Eveleth and Mayor Frederick.

NAYS: None.

ABSTAIN: Councilperson Cook.

**ELECTRIC RATE AGREEMENT –PALMER AVENUE WELLS**

Motion by Councilperson Forster to authorize the following resolution formalizing an agreement with Consumers Energy for a reduced rate for the Palmer Avenue wells located at 1510 & 1590 Palmer Avenue and further authorized the Mayor and City Clerk to sign appropriate documents.\*

**RESOLUTION NO. 13-2010**

RESOLVED, that is hereby deemed advisable to enter into a contract with Consumers Energy Company of Jackson, Michigan, for furnishing electric service within the City of Owosso for a period of one (1) year and thereafter from year to year, in accordance with the terms of the contract heretofore submitted to and considered by this Council.

RESOLVED, further, that the Mayor and the Clerk be and are authorized and directed to execute such contract on behalf of the City.

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilperson Forster, Cook, Mayor Pro-Tem Popovitch, Councilpersons Erfourth, Eveleth, Martenis, and Mayor Frederick.

NAYS: None.

\*Full text of the agreement is on file in the Clerk's Office.

**CURWOOD FESTIVAL START DATE ADJUSTMENT**

Mayor Frederick noted the Main Street Board had approved this proposal unanimously. He commended Curwood organizers for their positive efforts in dealing with business concerns.

Motion by Councilperson Forster to approve moving the start date, and corresponding set up date, for the Curwood Festival up by one day on the condition that the Festival and the Main Street Board review the results of the change and base any early start time decisions in 2011 on that review.

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilpersons Martenis, Erfourth, Forster, Eveleth, Mayor Pro-Tem Popovitch, Councilperson Cook, and Mayor Frederick.

NAYS: None.

**CABLE EQUIPMENT PURCHASE**

City Clerk Kohagen explained the details of the proposed purchase.

There was discussion regarding the cost of contracting out for broadcast services and whether the City should purchase equipment no matter who provides the actual broadcasting services. Cable Commission member Hardwick noted he supported the City purchasing equipment but is concerned that Christian programming would be limited if the City were to take over.

City Manager Fivas noted that much of the broadcast equipment currently available in the community is outdated and would need to be replaced at some point. If there should be a catastrophic failure of equipment and the statutory broadcasting requirement is not met Charter can take the channel back. He went on to say that he felt the purchase of new equipment would help to move the station forward no matter what organization performs broadcasting services. He noted that there was money in the current budget for the purchase of equipment, but was reluctant to assume the money would remain in next year's budget should the Council decide to hold off for a period of time.

Councilperson Martenis noted that it is not his expectation that lots of Christian programming would be eliminated should the City take over broadcasting services but that the new equipment would allow a schedule to be developed and broadcast.

Mayor Frederick noted the time that has gone into this issue. He went on to say that he was disheartened by the problems at the last Cable Commission meeting as well as the letter that was presented by OCTS. He felt the City would not be able to reliably say that it could provide cable access to the community without the purchase of equipment and that under the current arrangement the City was vulnerable. He felt that the purchase of new equipment would provide a stabilizing force for the station.

Councilperson Cook noted that he wanted more information on cable equipment and alternatives to buying equipment prior to authorizing a purchase. It was noted the motion before the Council was to authorize sending out a bid. Bid information would be submitted to Council for approval prior to any purchase.

Councilperson Erfourth inquired what will happen to the channel after March 1<sup>st</sup> should OCTS no longer provide broadcasting services. It was noted the Cable Commission would be meeting Monday, February 22, 2010 to discuss the issue.

Motion by Councilperson Forster to approve letting bids for a new cable broadcast system.

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilpersons Martenis, Cook, Forster, Erfourth, Eveleth, Mayor Pro-Tem Popovitch, and Mayor Frederick.

NAYS: None.

**LEBOWSKY CENTER AGREEMENT**

There was discussion regarding re-recording a second lien on the Lebowsky property to protect the City's interest in the project. City Manager Fivas noted that he would be happy to look into the idea if Council so directs.

Motion by Councilperson Erfourth to approve the following agreement between Owosso Main Street and the City of Owosso formalizing responsibilities for the VSCI grant for facade construction at the Lebowsky Center and research the possibility of placing a 2<sup>nd</sup> mortgage on the property as follows:

**AGREEMENT**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the City of Owosso, a Michigan municipal corporation and Owosso Main Street, a body corporate formed pursuant to Michigan Act 197 of 1975.

WHEREAS the City of Owosso received from the Michigan State Housing Development Authority a Vibrant Small Cities Initiative Grant in the amount of \$350,000.00 which is intended to be used by the Owosso Community Players for a facade improvement project on the Lebowsky Center at 122 East Main Street, Owosso, Michigan 48867;

WHEREAS said Grant requires that the City must abide by certain repayment, reuse and resale provisions wherein the City would be required to return all or a portion of the grant funds to the State of Michigan in accordance with the following schedule:

	<b>Liability</b>	<b>Schedule</b>	
Year 1	2010-2011	-100% payback	\$350,000.00
Year 2	2011-2012	- 80% payback	\$280,000.00
Year 3	2012-2013	- 60% payback	\$210,000.00
Year 4	2013-2014	- 40% payback	\$140,000.00
Year5	2014-2015	- 20% payback	\$ 70,000.00

WHEREAS Owosso Main Street wishes to encourage the facilitation of such grant and is willing to share the risk of the possibility of failing to abide by the repayment, reuse and resale provisions of the grant; and

WHEREAS, Owosso Main Street has committed to repay certain Bonds issued by the City of Owosso,

NOW, THEREFORE, IT IS HEREBY AGREED:

1. That both parties shall hold in reserve the sum of \$350,000.00 of approved Downtown Development Bonds until July 1, 2012. This agreement requires that Owosso Main Street and the City of Owosso shall not commit said sum to other projects.

2. That this Agreement contains the entire agreement of the parties as to its subject matter.

3. This Agreement shall not be assigned by either party without the written consent of the other party.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Eveleth, Erfourth, Forster, Mayor Pro-Tem Popovitch, Councilpersons Martenis, Cook, and Mayor Frederick.

NAYS: None.

### **WASHINGTON STREET STREETScape CONTRACT**

Motion by Councilperson Eveleth to approve the contract with the Michigan Department of Transportation detailing responsibilities for the Washington Street Streetscape Project as follows.

#### PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of \_\_\_\_\_, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF OWOSSO, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Owosso, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated January 29, 2010, attached hereto and made a part hereof:

#### PART A - FEDERAL PARTICIPATION

Streetscaping work along Washington Street from Jerome Street to Mason Street; including sidewalk and landscaping work; and all together with necessary related work.

#### PART B - NO FEDERAL PARTICIPATION

Irrigation system and electrical work along Washington Street from Jerome Street to Mason Street; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of transportation enhancement activities; and

WHEREAS, it has been determined that the PROJECT qualifies for such funding by virtue of its direct relationship with the intermodal transportation system; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

AMERICAN RECOVERY AND REINVESTMENT ACT  
TRANSPORTATION ENHANCEMENT ACTIVITIES  
SURFACE TRANSPORTATION PROGRAM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other

costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT, including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, under the terms of this contract, shall:

A. At no cost to the PROJECT

(1) Design or cause to be designed the plans for the PROJECT and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT shall not relieve the REQUESTING PARTY of its obligation hereunder.

(2) Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

(3) Perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT. However, the DEPARTMENT may provide a competent inspector to protect the trunkline interest and shall have the right to reject any or all portions of the work which are not executed pursuant to the plans and specifications.

B. Within 10 days of any ceremony to be held in connection with the PROJECT, notify the DEPARTMENT.

C. When issuing any news release or promotional material regarding the PROJECT, give the DEPARTMENT and FHWA credit for participation in the PROJECT.

D. Within 60 days of completion of the PROJECT work, prepare and submit a project report in accordance with current DEPARTMENT requirements.

E. Said report & notification shall be submitted to:

Michael Kapp, Transportation Enhancement Administrator  
Office of Economic Development and Enhancement  
425 West Ottawa, P.O. Box 30050  
Lansing, Michigan 48909  
Phone: (517)335-1069

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

The method of performing the work will be indicated on the work authorization. The REQUESTING PARTY will comply with PART II, Section IEF, when applicable.

5. The PROJECT COST shall be met in accordance with the following:

PART A

The PART A portion of the PROJECT COST shall be met in part by contributions by the Federal Government. The combined total of Federal American Recovery and Reinvestment Act Funds and Federal Transportation Enhancement Activities Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$416,863, or (2) a combined amount such that the normal Federal participation ratio of 100 percent for the Federal American Recovery and Reinvestment Act Funds and 80 percent for the Federal Transportation Enhancement Activities Funds for the

PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The maximum amount of Federal American Recovery and Reinvestment Act Funds and Federal Transportation Enhancement Activities Funds for the PART A portion of the PROJECT are estimated to be \$50,000 and \$366,863, respectively. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

The PART B portion of the PROJECT COST is not eligible for Federal participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

7. It is understood that the REQUESTING PARTY is responsible for the facilities constructed as the PROJECT and that said facilities may require special or unusual operation and/or maintenance. The REQUESTING PARTY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required.

On projects for the construction of bikeways, the REQUESTING PARTY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

On projects involving the restoration of historic facilities, the REQUESTING PARTY agrees that the project will not be awarded until the owner of such facilities has an Historic Preservation Covenant, which includes an Historic Preservation Easement, or an Historic Preservation Agreement, as appropriate, with the Michigan State Historic Preservation Office in accordance with 1995 PA 60 for the purpose of insuring that the historic property will be preserved. The REQUESTING PARTY also agrees that such facilities shall be maintained and repaired by the REQUESTING PARTY or owner, as applicable, at no cost to the DEPARTMENT or the PROJECT, in such a manner as to preserve the historical integrity of features, materials, appearance, workmanship, and environment.

On projects which include landscaping, the DEPARTMENT, at PROJECT COST, agrees to perform or cause to be performed, the watering and cultivating necessary to properly establish the plantings for a period of two growing seasons, in general conformance with Section 815.03(L) of the DEPARTMENT'S Standard Specifications for Construction. The REQUESTING PARTY shall maintain all plantings following completion of said period of establishment.

Failure of the REQUESTING PARTY to fulfill its responsibilities as outlined herein may disqualify the REQUESTING PARTY from future Federal-aid participation in Transportation Enhancement projects or in other projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

Buy American Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(l)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of

property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402, MSA 3.996(102).

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401; MSA 3.996(101), which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402; MSA 3.996(102). Exclusive jurisdiction of such highway for the purposes of MCL 691.1402; MSA 3.996(102) rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and

has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

17. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

18. In accordance with the American Recovery and Reinvestment Act of 2009 (ARRA), the following language is made a part of this contract and is to be made a part of all tier subcontracts or consultant contracts for work covered by this contract funded with funds appropriated or otherwise made available by the ARRA:

Pursuant to Section 902 of the ARRA, the United States Comptroller and any of his representatives have the authority:

- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) to interview any officer or employee of the contractor or any of its subcontractors, or any State or local government agency administering the contract, regarding the transactions.

The United States Comptroller and his representatives have the authority and rights provided under Section 902 of the ARRA with respect to this contract. As provided in Section 902 of the ARRA, nothing in Section 902 of the ARRA shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Pursuant to Section 1515 of the ARRA, any representatives of the Inspector General have the authority:

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

Nothing set forth in Section 1515 of the ARRA shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

19. As a part of the ARRA, Davis-Bacon prevailing wage requirements apply to all ARRA funded construction projects regardless of location (including projects on local roads or rural minor collectors, and Transportation Enhancement projects outside the highway right-of-way) and will be adhered to, as applicable, by the parties hereto.

19. Within ten (10) days after the end of each month in which ARRA funded PROJECT work is performed, the REQUESTING PARTY shall provide the DEPARTMENT a monthly report, in a format and on forms approved by the DEPARTMENT, which shall include, for

such work performed by the REQUESTING PARTY, the contractor, and all tier subcontractors and consultants in that preceding month:

- \* The total number of employees who performed work on this contract
- \* The total number of hours worked by employees who performed work on this contract
- \* The total wages of employees who performed work on this contract

If necessary to conform to guidance provided by the FHWA concerning the ARRA reporting requirements, the REQUESTING PARTY will revise their reporting as directed by the DEPARTMENT. Failure to comply with the reporting requirements under ARRA would jeopardize the DEPARTMENT'S continued receipt of ARRA funding. Should the REQUESTING PARTY fail to comply with the above monthly reporting, the DEPARTMENT may withhold reimbursement of federal funds for the PROJECT work until compliance is achieved.

20. In accordance with the ARRA, the following language is made a part of this contract and is to be made a part of all tier subcontracts or consultant contracts for work covered by this contract funded with funds appropriated or otherwise made available by the ARRA:

Pursuant to Section 1553 of the ARRA, all non-federal employers receiving ARRA funds, including the State of Michigan, all contractors and grantees of the State of Michigan, and all subcontractors and subgrantees, are prohibited from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- (1) gross mismanagement of a contract or grant relating to ARRA funds;
- (2) a gross waste of ARRA funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- (4) an abuse of authority related to the implementation or use of ARRA funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

Any employer receiving ARRA funds must post notice of the rights and remedies available to employees under Section 1553 of the ARRA.

21. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

#### EXHIBIT I

CONTROL SECTION ARUL 76421  
 JOB NUMBER 105162  
 PROJECT ARRA 1076(008)

#### ESTIMATED COST

#### CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$532,400	\$114,500	\$646,900

#### COST PARTICIPATION

#### GRAND TOTAL ESTIMATED COST

Less Federal American Recovery and Reinvestment Act Funds*	\$532,400	\$114,500	\$646,900
	<u>\$ 50,000</u>	<u>\$ -0-</u>	<u>\$ 50,000</u>
Balance	\$482,400	\$114,500	\$596,900
Less Federal Transportation Enhancement Activities Funds*	<u>\$366,863</u>	<u>\$ -0-</u>	<u>\$366,863</u>
REQUESTING PARTY'S SHARE	\$115,537	\$114,500	\$230,037

#### NO DEPOSIT

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilpersons Erfourth, Cook, Mayor Pro-Tem Popovitch, Councilpersons Martenis, Forster, Eveleth, and Mayor Frederick.

NAYS: None.

### **EXECUTIVE SESSION**

Motion by Councilperson Eveleth to authorize holding Executive Session at the conclusion of regular business for the purpose of discussing pending litigation.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Martenis, Erfourth, Mayor Pro-Tem Popovitch, Councilpersons Eveleth, Cook, Forster, and Mayor Frederick.

NAYS: None.

### **COMMUNICATIONS**

J. David Harrelson. Letter of Resignation.

Ronald G. Baker, City Engineer. VSCI Grant Budget Report.

Gary Palmer, Building Official. January 2010 Building Department Report.

Gary Palmer, Building Official. January 2010 Code Violations Report.

Michael T. Compeau, Public Safety Director. January 2010 Police Department Report.

Michael T. Compeau, Public Safety Director. January 2010 Fire Department Report.

### **CITIZEN COMMENTS AND QUESTIONS**

Suzanne Carpenter, 120 North Washington Street, expressed her disgust for Council's action to move forward with the Washington Street Streetscape project. She said the project would be devastating to merchants and she doesn't believe the contractors promises to finish work in a timely manner.

Thomas Manke, 2912 West M-21, detailed the mission project going on in Westown for the last 30 weeks noting the group is attempting to feed those that are hungry and to help calm the area. He said he has heard no complaints about smoke until the last couple of weeks.

James Gutting, 604 Adams Street, indicated he had recently purchased two properties in town that he hoped to convert to rentals. He said he would like to see general improvements made in neighborhoods made primarily of rentals. Lastly he noted that his business had survived the reconstruction of Corunna Avenue without a problem and he hoped the Washington Street businesses would not suffer either.

Eddie Urban, 601 Glenwood Avenue, inquired who would keep the parking lots involved in the proposed Armory development plowed. He also proposed constructing a solid bridge over the river directly behind the Armory for the workers in the new development.

Mayor Frederick asked that the Armory redevelopment materials be placed on the website.

City Manager Fivas indicated Owosso would be hosting all the City Managers in the region for a luncheon on Tuesday.

### **DISCUSSION ITEMS**

#### **WATER/SEWER RATE ADJUSTMENTS**

Due to the late hour Utilities Director Gary M. Burk agreed to give his presentation during the March 1, 2010 meeting. He inquired whether Council felt it had enough information to have a good conversation on the subject. He offered to bring in a third party to provide an opinion on the needs of the system. He also offered to bring proposals to the March 1 meeting.

There was discussion regarding the characteristics of the communities used as comparables for the City, separating the costs involved in providing water, and the rate charged to the townships. Mr. Burk indicated an increase in the rates should be strongly considered as the City has done approximately 1/3 of the capital outlay work that has needed to be done over the last 4 years. He went on to say that all the cuts that can be made at this point have been made and the system is still drawing on fund balance.

There was question why rates had not been increased in the last few years. It was noted that a rate hike went into effect in 2005 with the promise of subsequent hikes in the years following but the Council at that time did not feel comfortable raising rates further.

The Council directed staff to bring proposals to the March 1<sup>st</sup> meeting.

**FEBRUARY 20<sup>TH</sup> SPECIAL MEETING**

Councilperson Cook distributed a time table of priorities he had developed as well as a list of goals for 2010. There was discussion about expediting the priorities conversation during the February 20<sup>th</sup> meeting as the subject had already been discussed previously and there was need to move forward.

There was further discussion regarding the order of items for the February 20<sup>th</sup> meeting. It was asked that the priorities item be addressed first at the special meeting on Saturday.

**THE COUNCIL RECESSED TO EXECUTIVE SESSION AT 11:27 P.M.**

**THE COUNCIL RETURNED FROM EXECUTIVE SESSION AT 11:38 P.M.**

**APPROVAL OF THE MINUTES OF EXECUTIVE SESSION OF NOV 2, 2009**

Motion by Councilperson Forster to approve the Executive Session minutes of November 2, 2009.

Motion supported by Councilperson Eveleth and concurred in by unanimous vote.

**APPROVAL OF THE MINUTES OF EXECUTIVE SESSION OF FEBRUARY 8, 2010:**

Motion by Councilperson Forster to approve the Executive Session minutes of February 8, 2010.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

**BONNER CASE SETTLEMENT**

Motion by Councilperson Eveleth to approve a \$50,000 settlement and pledge that no special assessment for the removal of an underground tank will be placed on the property in question to resolve the Bonner case involving the removal of an underground storage tank on North Ball Street.

Motion supported by Councilperson Martenis and concurred in by unanimous vote.

**NEXT MEETING**

Saturday, February 20, 2010 – Special Meeting  
Monday, March 1, 2010 – Regular Meeting

**BOARDS AND COMMISSIONS OPENINGS**

Zoning Board of Appeals – Alternate, term expires 06-30-2012  
Shiawassee District Library Board, term expires 06-30-2013

**ADJOURNMENT**

Motion by Councilperson Martenis for adjournment at 11:40 p.m.

Motion supported by Councilperson Eveleth and concurred in by unanimous vote.

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Benjamin R. Frederick, Mayor

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Amy K. Kohagen, City Clerk