

**CALL TO ORDER**

IN REGULAR SESSION Monday, November 16, 2009, at 7:00 P.M. in the Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order by Mayor Smith.

**ROLL CALL**

Roll was called:

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

Also Present: City Manager Tarkiewicz

Absent: Council Member Traver.

**Moved** Williams, supported Miller, to excuse the absence of Council Member Traver. On a voice vote: **MOTION CARRIED**

**INVOCATION/PLEDGE OF ALLEGIANCE**

David Litchfield, Chaplain of the Calhoun County Sheriffs Department gave the Invocation and Mayor Smith led the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

**Moved** Williams, supported Miller, to approve the agenda with the addition of the swearing in of the new Ward 5 Council Member before Council and Manager Communications. On a voice vote: **MOTION CARRIED.**

**PRESENTATIONS AND RECOGNITION**

None.

**PUBLIC COMMENT ON AGENDA ITEMS**

David Morris of 509 Forest Court recommended the appointment of John Miller to the Casino Board.

**PUBLIC HEARINGS AND SUBSEQUENT COUNCIL ACTION**

None.

**OLD BUSINESS**

None.

**REPORTS AND RECOMMENDATIONS**

A. Tribal Manufacturing Inc. Electric Service Agreement:

**Moved** Williams, supported Metzger, to approve the Electric Service Agreement with Tribal Manufacturing and authorize the Clerk to sign the agreement. On a roll call vote – ayes: Dyer, Metzger, Miller, Mayor Smith, and Williams; nays: none. **MOTION CARRIED.**

**ELECTRIC SERVICE AGREEMENT**

Between  
City of Marshall, Michigan  
And  
Tribal Manufacturing

THIS AGREEMENT ENTERED INTO THIS \_\_\_\_\_ by and between the City of Marshall, Michigan its successors and assigns, hereinafter called the Utility, and Tribal Manufacturing, its successors and assign, hereinafter called the Consumer.

**WITNESSETH:**

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

1. The Utility agrees to furnish to the Consumer during the term of this Agreement and Consumer agrees to take from the Utility, all of the electric energy requirements used by the Consumer at his premises located at 450 Leggitt Rd..
2. The Utility is to furnish and the Consumer is to take electric energy under the terms of this Agreement for a period of One Hundred & Twenty Months (120) MONTHS from the Effective Date of this Agreement as hereinafter defined, and thereafter for successive periods of not less than twelve (12) MONTHS each, until either party shall give the other not less than twelve (12) MONTHS notice in writing, of its or his election to discontinue the service at the expiration of any said specified period.
3. The Effective Date of this Agreement shall be the date that this Agreement is executed by Consumer, and the Rate Schedule set forth herein shall apply to the first regular billing period of Utility that occurs after that date.
4. In the event that this Agreement is terminated as provided herein, subsequent electric service furnished by the Utility to the Consumer shall be billed according to the Utility's regular filed schedules applicable to Consumer's service requirements.
5. The Consumer agrees to make available and to allow Utility to occupy at no cost to Utility, such facilities and right-of-ways on the premises of Consumer as

may be required by Utility in order to adequately serve Consumer's requirements.

6. The electric energy delivered hereunder shall be alternating current at approximately 4,160 volts, 3-phase, 60 cycles and shall be metered at 4,160 volts or equivalent, by means of suitable metering equipment installed, owned and maintained by the Utility at the metering point described herein. The electric energy shall be supplied at a reasonably close maintenance of constant potential and the Consumer shall design his circuits so that as far as practical each phase will be balanced equally with respect to load. Consumer shall use electric energy in a manner so that such use shall not be detrimental to the electric service supplied by Utility to its other Consumers.

7. The transformers required to supply Consumer's electric power requirements shall conform to Utility's standards as to design and protective equipment. Said complete transformers, including all appurtenances, shall be installed, maintained and owned by the Consumer and shall initially include 2000 kVa of transformer capacity.

The Initial System Capacity reserved and dedicated by Utility to supply Consumer's requirements shall be 2000 kVa. The Utility will furnish additional system capacity to supply Consumer's requirements but will not be obligated to furnish an aggregate amount of capacity in excess of 2000 kVa except by Special Supplementary Agreement.

8. Consumer agrees to pay Utility monthly for all of Consumer's electric energy requirements in accordance with Utility's regularly filed and published Rate Schedule or subsequent revisions thereof as may be authorized by the Regulatory, Legislative, or Administrative Authority having jurisdiction over same, said Schedule being known as Industrial Primary Service "D", a copy of which is attached hereto and made a part of this Agreement, and subject to Utility's General Rules and Regulations relating to furnishing and use of its service.

9. As an incentive the Consumer shall receive a reduction in the applicable kW Billing Capacity in excess of 480 kW as determined under the rate schedule set forth in Section 8, as follows:

<u>Reduction Period</u>	<u>Capacity Reduction</u>
First 120 Months	50%

Said reductions shall begin with the first billing month in which Consumer's applicable kW Billing Capacity exceeds 480 kW and shall continue for a period of one hundred and twenty months (120) months, as indicated above, or until termination of this Agreement as provided in Section 2, if sooner.

10. The Utility will use reasonable diligence in furnishing a regular and uninterrupted supply of energy, but in case the supply of energy be interrupted or fail by reason of an Act of God, the public enemy, accidents, strikes, legal processes, state or municipal interference, breakdowns or injury to the machinery or distribution lines of the Utility, or extraordinary repairs, the Utility shall not be liable for damages.

11. The Utility shall not be liable to the Consumer for any loss, injury or damage resulting from Consumer's use of his equipment or from the use of the energy supplied by the Utility beyond the point of connection of Utility's wire and equipment to Consumer's wires and equipment. Said point of connection is hereby mutually agreed to be at the point the Utility's facilities connect to the primary bushings of the Consumer's transformer.

12. Consumer shall provide at no cost to Utility adequate space, at a location to be determined by Utility, that will permit the installation of Utility's metering equipment, including instrument transformers and other metering appurtenances. Where Consumer installs the necessary substation equipment specified in the applicable Rate Schedule, Consumer shall provide in his substation, adequate space, including the necessary brackets and mounting plates and beams to support and mount Utility's metering transformers and other metering equipment. Consumer shall also provide the necessary high voltage connections to Utility's metering instrument transformers.

13. The Consumer agrees that the properly authorized agents of the Utility shall at all reasonable hours have free access to said premises for the purpose of examining, repairing or removing meters, equipment or other appurtenances belonging to Utility.

14. Bills for power service shall be rendered monthly at the Net Rates set forth in the applicable Schedule and if not paid on or before the date set forth on bill to Consumer, the Gross Rates or Charges set forth in said Rate Schedule shall apply.

15. If the Consumer shall be default in the payment of any bill as aforesaid, or shall violate any of the terms or conditions of this Agreement or Utility's General Rules and Regulations, the following procedure shall apply: (a) Utility shall deliver at the premises, addressed to the Consumer, a Written Notice of its intention to cut off supply of electricity to Consumer on or before the specified date; (b) if Consumer has not by said specified date corrected such default or violation to Utility's full satisfaction, Utility shall then have the right, without further notice, to cut off the supply of all electricity to Consumer; (c) Utility reserves the right to continue to withhold the supply of electricity until such time as such default in, or violation of, the terms of this Agreement has been

corrected to the full satisfaction of Utility.

Any suspension of service by the Utility for the above reasons shall not terminate this Agreement or cancel any payments owed by Consumer to Utility, or affect the applicable "Monthly Minimum Charge" for any period during which service is so suspended.

16. There are no understandings or Agreements outside of this Agreement.

17. This Agreement cancels and supersedes all previous Agreements, Contracts or Understandings relating to the supply of Electric Service by Utility to Consumer.

18. This Agreement shall be in full force and effect as provided herein when signed by properly authorized officers of the parties hereto.

19. Any notice required for permitted to be given under this Agreement shall be given in writing and shall be deemed to be given when delivered by hand or when transmitted by one of the following means: first class United States mail, postage paid; overnight deliver; or facsimile. If to Utility, notices shall be addressed to:

City of Marshall  
323 West Michigan Avenue  
Marshall, MI 49068

and, if to Consumer, at:

Tribal Manufacturing  
450 Leggitt Rd.  
Marshall, Mi 49068

ATTEST:

City of Marshall, Michigan

\_\_\_\_\_

By:\_\_\_\_\_

ATTEST:

Tribal Manufacturing

\_\_\_\_\_

By:\_\_\_\_\_

**B. Allen Road Sanitary Sewer Backup Claim:**

**Moved** Dyer, supported Williams, to approve a good-faith payment of \$3,557.75 to Ryan Valentine of 423 Allen Road for a Sewer Backup Claim. On a roll call vote – ayes: Metzger, Miller, Mayor Smith, Williams, and Dyer; nays: none. **MOTION CARRIED.**

**Moved** Dyer, supported Metzger, to reconsider the previous motion to approve the good-faith payment to Ryan Valentine. On a voice vote - **MOTION CARRIED.**

**Moved** Dyer, supported Miller, to approve a good-faith payment in the amended amount of \$3,838.75 to Ryan Valentine of 423 Allen Road for a Sewer Backup Claim. On a roll call vote – ayes: Miller, Mayor Smith, Dyer, and Metzger; nays: Williams. **MOTION CARRIED**

**C. Sanitary Sewer Backup Policy:**

**Moved** Williams, supported Miller, to revoke the City of Marshall Administrative Policy on Sanitary Sewer Backups effective immediately. On a roll call vote - ayes: Mayor Smith, Williams, Dyer, Metzger, and Miller; nays: none. **MOTION CARRIED.**

**APPOINTMENTS / ELECTIONS**

**A. City Council Appointment:**

**Moved** Miller, supported Williams, to appoint Brad Doane to fill the Ward 5 Council Seat vacated by Luanne Miller. On a voice vote: **MOTION CARRIED.**

**B. Firekeepers Casino Local Revenue Sharing Board:**

**Moved** Miller, supported Williams, to nominate Council Member Jim Dyer to the Firekeepers Casino Local Revenue Sharing Board for the City of Marshall. On a voice vote: **MOTION CARRIED.**

**C. Parks, Recreation and Cemetery Board Reappointments:**

**Moved** Dyer, supported Williams, to reappoint Lee Sherman to the Parks, Recreation and Cemetery Board with a term expiring July 1, 2010 and Randy Esthuis with a term expiring July 1, 2011. On a voice vote: **MOTION CARRIED.**

**CONSENT AGENDA**

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

- A.** Schedule a public hearing for Monday, December 21, 2009 at 7:00 p.m. to hear public comment on the completion of the Tenneco Road extension project;
- B.** Reaffirm the right-of-way purchase from Kenneth and Lynnda Kiessling for \$24,449.32;

- C. Minutes of the Regular City Council meeting held Monday, November 2, 2009;
- D. Approve city bills in the amount of \$193,593.89.

**Moved** Dyer, supported Miller to amend the motion and have item 13B read “authorize payment” for purchase of right-of-way from Kenneth and Lynnda Kiessling for \$24,449.32. On a voice vote: **MOTION CARRIED.**

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

**PUBLIC COMMENT ON NON-AGENDA ITEMS**

John LaPietra of 386 Boyer Court reminded citizens of Dark Earth Hour and welcomed the idea of forming a committee to encouraged working together within the community.

**OATH OF OFFICE**

Deputy Clerk Nelson administered the Oath of Office to Brad Doane as Council Member representing Ward 5.

**COUNCIL AND MANAGER COMMUNICATIONS**

None.

**ADJOURNMENT**

The meeting was adjourned at 8:20 p.m.

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Bruce R. Smith, Mayor

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Sandra Bird, Clerk-Treasurer