



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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FEBRUARY 25, 2013

Regular meeting of the City Council held on Monday, FEBRUARY 25, 2013 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 8:58 PM.

ORDERED: That the minutes of the City Council Meeting FEBRUARY 11, 2013, **FILE**; adopted.

ORDERED: That the **PUBLIC HEARING** On the Application for Special Permit from Crown Castle, on behalf of T-Mobile, to exchange six existing antennas on a cell tower, 445 Simarano Dr., Order No. 12/13-1005249, all were heard who wish to be heard, hearing recessed at 8:06 p.m.; adopted.

Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers.

ORDERED: That the **PUBLIC HEARING** On Proposed Zoning Amendment by Attorney Bergeron to Sections 650-40(F), 48(C)(1) and 47(F), Order No. 13-1005306, as follows:

1) That Sec. 650-40(F) be amended by adding thereto the following new subsection 11

“(11) Bridges, walkways or passageways, enclosed or otherwise, connecting buildings located on different lots in a Limited Industrial district shall not thereby violate any lot setback provision of any building or buildings connected by said structures “

2) That Section 650-48(C)(1) be amended by adding thereto, at the end thereof, the following sentence:

“In a Limited Industrial district, the parking shall be provided within 500 feet of the building or structure to be served, on the building lot, on any lot under the same ownership, or on any lot subject to an easement to the owner of said building to be served which, in the opinion of the Building Commissioner, causes said parking to be available for the purposes of this section.”

3) That Section 650-47(F) be amended by adding thereto the following subsection 5:

(5) In all Limited Industrial districts, the side yard landscaping requirement shall not apply to side yard or rear yard lines that bisect parking lots, if both lots are in common ownership or if there are parking easements that, in the opinion of the Building Commissioner, adequately allow for parking in one lot by persons using the other lot.

4) That the Table of Lot Areas, Yards and Height of Structures, which is referred to in Section 650-41, be amended by adding to the table of heights and their relationship to their distance from a Residential zone, the following:

“Over 500 feet from a residential zone: 85 feet”

All were heard who wish to be heard, hearing recessed at 8:35 p.m., adopted.

Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers.

ORDERED: That the Assessor transfer request in the amount of \$20,000.00 & \$10,000.00 which moves funds from Principal Assessor to Professional & Technical Services and from Senior Assessor to Professional & Technical Services respectively, which will fund contracted appraisal services for the 4th quarter of FY2013, refer to **FINANCE COMMITTEE**; adopted.

FROM:

| | |
|------------------------|-------------|
| Acct. # 11410001-50160 | \$20,000.00 |
| Principal Assessor | |

TO:

| | |
|-----------------------------------|-------------|
| Acct. # 11410004-53180 | \$20,000.00 |
| Professional & Technical Services | |

FROM:

| | |
|------------------------|-------------|
| Acct. # 11410001-50170 | \$10,000.00 |
| Senior Assessor | |

TO:

| | |
|-----------------------------------|-------------|
| Acct. # 11410004-53180 | \$10,000.00 |
| Professional & Technical Services | |

Suspension of the Rules requested-granted to allow the DPW Commissioner to speak

ORDERED: That pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, upon the recommendation of the Mayor, approves expenditures up to \$1,350,000.00 in excess of available appropriation for snow and ice removal for fiscal year 2013, **APPROVED**; adopted.

ORDERED: That the provisions of Section 20 of Chapter 32B of the General Laws of the Commonwealth of Massachusetts, entitled Other Post-Employment Benefits Liability Trust Fund, be and is hereby accepted by the City Council for the City of Marlborough, and further, that the City Council for the City of Marlborough hereby establishes an Other Post-Employment Benefits (“OPEB”) Trust under the terms and conditions provided below:

**CITY OF MARLBOROUGH
OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST
TRUST AGREEMENT**

This TRUST AGREEMENT is made this ___ day of _____, 2013 by and between the City of Marlborough, acting through its City Council (the "City") and the duly serving members of the Marlborough Retirement Board (the "Trustees").

WITNESSETH:

WHEREAS, the City has established certain other post-employment benefits ("OPEB"), other than pensions, for eligible former employees of the City; and

WHEREAS, the City wishes to establish an irrevocable trust (the "Trust") for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board ("GASB") Statements 43 and 45; and

WHEREAS, the Trust is established by the City with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code of 1986 and Regulations issued thereunder and as a trust for OPEB under M.G.L. c. 32B, § 20;

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, City and the Trustees hereby agree as follows.

ARTICLE 1 - DEFINITIONS

As used herein, the following terms shall have the following meanings:

- 1.1. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3. "GASB 43 and 45," shall mean Government Accounting Standards Board, Statement No. 43 and Statement No. 45, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.
- 1.4. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB 43 and 45 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.
- 1.5. "Retired Employee" means those persons who have retired from employment with the City and who are qualified to receive retirement benefits pursuant to M.G.L. c. 32 or as otherwise provided by law.

1.6. "Trust" means the Anywhere OPEB Trust as hereby established.

1.7. "Trustee" means the duly serving members of the Board of Trustees, and any successor Trustee appointed as provided pursuant to Article 5.

1.8. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

ARTICLE 2 - PURPOSE

2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the City, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the City's Retired Employees and their eligible dependents, and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.2. It is intended that the Trust shall constitute a so-called "Qualified OPEB Trust" according to the standards set forth in GASB 43 and 45, and that it further qualify as an Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3 - ESTABLISHMENT OF TRUST

3.1. In order to implement and carry out the provisions of M.G.L. c. 32B, § 20, the City hereby establishes this Trust which shall be known as the "City of Marlborough OPEB Trust."

3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the City until all OPEB owed to retired City employees have been satisfied or defeased.

3.3. The principal location of the Trust shall be Marlborough City Hall, 140 Main Street, Marlborough, Massachusetts 01752.

3.4. The Trustees hereby accept the trusts imposed upon them by this Trust Agreement and agree to perform said trusts as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5. The Trustees shall hold legal title to all property of the Trust, and neither the City, nor any employee, official, or agent of the City, nor any individual, shall have any right, title or interest to the Trust.

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the City, which sums, together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the City to make contributions to the Trust to fund OPEB. Any obligation of the City to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4 - TRUST FUNDING

4.1 The Trust Fund shall be credited with all amounts appropriated or otherwise made available to the City and employees of the City as a construction to the Trust for the purposes of meeting the current and future OPEB costs payable by the City, or any other funds donated or granted specifically to the City for the Trust, or to the Trust directly.

4.2 The Trustees shall be accountable for all delivered contributions, but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the City.

4.3 The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the City, but shall be responsible only for property received by the Trustees under this Trust Agreement.

4.4 The City shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the City's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the City's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the City for such purposes. The obligation of the City to pay or fund OPEB obligations, if any, shall be determined by the City or applicable law. Distributions of assets in the Trust are not debts of the City within the meaning of any constitutional or statutory limitation or restriction.

4.5 Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the City for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.6 Amounts in the Trust Fund shall in no event be subject to the claims of the City's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the City, or of retirees or dependents who are entitled to OPEB.

ARTICLE 5 - TRUSTEES

5.1 The Trust shall be administered by Marlborough Retirement Board (the "Board").

5.2 Each Board member shall, for purposes of this Trust, be deemed a trustee ("Trustee").

5.3 In the event a Trustee resigns, is removed or is otherwise unable to serve, the Board shall hold an election to fill the vacancy.

5.4 Whenever a change occurs in the membership of the Board, the legal title to property held by this Trust shall automatically pass to those duly elected successor Trustees.

5.5. Each future Trustee shall accept the office of Trustee and the terms and conditions of this Trust Agreement in writing.

5.6. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, documents, or other documents in his possession or under his control belonging to the Trust.

5.7. The Trustees shall be special municipal employees for purposes of M.G.L. c. 268A and shall be subject to the restrictions and prohibitions set forth therein.

ARTICLE 6 - POWERS OF THE TRUSTEES

6.1. The Trustees shall have the power to control and manage the Trust and the Trust Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Agreement, the powers of the Trustees, in connection with their managing and controlling the Trust and its General Fund, shall include, but shall not be limited to, the following:

6.1.1. To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospital, medical or dental service corporations, or with one or more health care organizations or health maintenance organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services (including dental services), whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the Trustees from the Trust Fund for the payment by such intermediary to the health care vendors or persons entitled to such payments in accordance with the terms and provisions of said contract.

6.1.2 To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustees may choose and to pay premiums on such policies.

6.1.3. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustees shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustees concerning the investment and management of Trust assets.

6.1.4. To borrow or raise money for the purposes of the Trust, in such amount, and upon such terms and conditions as the Trustees shall deem advisable, subject to applicable law and statutes; and for any sum so borrowed to issue the promissory note of the Trust, and to secure the repayment thereof by creating a security interest in all or any part of the Trust or the Trust Fund; and no person lending such money shall be obligated to see that the money lent is applied to Trust purposes or to inquire into the validity, expedience or propriety of any such borrowing.

6.1.5. To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.

6.1.6. To employ suitable agents, advisors and counsel as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustees or the written minutes of the Trustees' meetings.

6.1.7. To hire employees or independent contractors as the Trustees may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust.

6.1.8. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, by any by-laws adopted by the Trustees or by law.

6.1.9. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.10. To maintain bank accounts for the administration of the Trust and the Trustee Fund and to authorize certain Trustees or other appropriate persons to make payments from any appropriate account for purposes of the Trust.

6.1.11. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.

6.1.12. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.

6.1.13. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustees, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

6.1.14. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson, or Secretary as may be voted by the Trustees.

6.1.15. To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.16. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.17. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

6.1.18. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.

6.1.19. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.20. To comply with all requirements imposed by applicable provisions of law.

6.1.21. To serve as custodian with respect to Trust assets.

**ARTICLE 7- LIMITATION OF TRUSTEES' POWERS, DUTIES
AND RESPONSIBILITIES**

7.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustees other than those set forth in this Trust Agreement.

7.2. The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

7.3. The Trustees, in their discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves or any other fiduciary selected by the Trustees as may be reasonable. The City, in its discretion, may also purchase liability insurance for the Trustees, and as the City may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

7.4. The City shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustees, any insurance company, or any beneficiary of the Trust Fund. The Trustees shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the City, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

7.5. Neither the Trustees nor the City shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

7.6. The Trustees shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to M.G.L. c. 203C.

ARTICLE 8 – ACTIONS BY THE TRUSTEES

8.1. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.

8.2. The Trustees may, by instrument executed by all of the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including the power to execute, acknowledged or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.

8.3. No Trustee shall be required to give bond.

ARTICLE 9 – LIABILITY OF THE TRUSTEES

9.1. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustees hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.

9.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.

9.3. Trustees are public employees for purposes of M.G.L. c. 258, and shall be indemnified by the City against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the City.

9.4. A Trustee shall not be indemnified for violation of the civil rights of any person if he acted in a grossly negligent, willful or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

ARTICLE 10 – MEETINGS OF THE TRUSTEES

10.1. The Trust may meet at such times and at such places as the Trustees shall determine.

10.2. The Trustees shall comply with the Open Meeting Law, M.G.L. c.30A, §§18-25 and its implementing regulations.

10.3. A quorum at any meeting shall be a majority of the Trustees then in office.

ARTICLE 11 - TAXES, EXPENSES, AND COMPENSATION

11.1. It is intended that the Trust will be a Code Article 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the Trust Fund to pay for any taxes owed.

11.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, including such compensation for the Trustees as may be approved by the City Council from time to time, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the Trust unless the City chooses to pay the expenses directly.

ARTICLE 12 – ACCOUNTS

12.1. The Trustees shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, clause 26th and their implementing regulations. The person or persons designated by the City shall be entitled to inspect such records upon request at any reasonable time.

12.2. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the City at the same time as it is presented to the Trustees.

12.3. The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

ARTICLE 13 - ANNUAL REPORTS

13.1. The Trustees shall furnish to the City annually, or more frequently if the City so requests, a statement of account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund.

ARTICLE 14 – INVESTMENT OF TRUST FUNDS

14.1. The Trustees hereby authorize and direct the City Treasurer to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule, and as provided in the Investment Policy which is attached to this instrument and hereby incorporated.

14.2. In no event shall the funds be invested directly in mortgages or in collateral loans.

ARTICLE 15 – CUSTODY OF THE TRUST FUNDS

15.1. The Trustees hereby appoint the City Treasurer as custodian of the Trust Fund and authorize the Treasurer to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the City.

15.2. The City Treasurer, with the authorization of the Trustees, shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustees may authorize the City Treasurer to draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 16 – TERMINATION OF TRUST

16.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by at least three Trustees, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the City.

16.2. Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the City and held by the City Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.

16.3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

ARTICLE 17 – AMENDMENTS

17.1. The Trust may only be amended as set forth herein. The City may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB 43 and GASB 45 to be treated as funded through a qualifying trust or equivalent arrangement.

17.2. This Trust Agreement may be amended, but not revoked, from time to time by the City, subject to the following limitations:

17.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the City's OPEB obligations, and reasonable expenses of administering the Trust.

17.2.2. The duties and liabilities of the Trustees cannot be substantially changed without their written consent.

17.3. Any amendment to this Trust shall be executed in writing.

ARTICLE 18 – MERGER

18.1. The City may provide for the merger of the Trust with one or more other trusts established by the City or other government entities for similar purposes as may be provided by law.

ARTICLE 19 – SEVERABILITY OF INVALID PROVISIONS

19.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement for any reason, and the remaining parts of the Agreement shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

ARTICLE 20 – MISCELLANEOUS

20.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

20.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

20.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustees, or as to whether or not the Trustees have acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustees may act upon any advice, request or representation in writing by the Trustees, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustees that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

20.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

20.5. Until advised to the contrary, the Trustees may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed in their respective names by their duly authorized officers as of the day and year first above written.

Witnessed By: MARLBOROUGH CITY COUNCIL,
By Its President,

Patricia Pope

Date:

Witnessed By: MARLBOROUGH RETIREMENT BOARD:
By Its Chairman,

Gregory P. Brewster

Date:

Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: Be it ordained by the City Council of the City of Marlborough that Order No. 08-001895-A, adopted on July 1, 2008 under M.G.L. chapter 59, §21 A1/2, which concerns additional compensation in the amount of ten percent (10%) for an assessor or assistant assessor who has completed the necessary courses of study and training and has been awarded a certificate by the International Assessing Officers as a certified assessment evaluator or who has been awarded a certificate by the Association of Massachusetts Assessors as a certified Massachusetts Assessor, is hereby repealed, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: Be it ordained by the City Council of the city of Marlborough, effective July 1, 2013, that the Code of the city of Marlborough, as amended, be further amended by deleting from Chapter 125 an annual stipend for the position of Assessor, quarter-time, as adopted by Order No. 89-2847A on June 26, 1989, and that the Code of the City of Marlborough, as amended, be further amended by amending Chapter 125, Personnel, Compensation Schedule, with the following:

| <u>Effective Date</u> | <u>Position</u> | <u>Annual Stipend</u> |
|-----------------------|----------------------------|-----------------------|
| Upon confirmation | Member, Board of Assessors | \$3,000.00 |

Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: Be it ordained by the City Council of the City of Marlborough, acting upon a recommendation of the Mayor, that Article VI., entitled "Board of Tax Assessors," of the Code of the City of Marlborough (hereinafter, the "City Code"), as amended, be further amended as follows:

1. Section 67-27 of the City Code, entitled "Chairman; status and duties," is hereby amended as follows:
 - a. By striking in its entirety Paragraph A. of said Section 67-27.
 - b. By striking the letter "B." from paragraph B. of said Section and inserting in place thereof the letter "A.," by inserting the words "as designated by the Mayor, and by striking the word "also," as follows:
 - A. The Chairman, as designated by the Mayor, shall be required to obtain evidence of all assets and income as required to be reported pursuant to all exemption and deferral programs, including certified or notarized statements, income tax returns or other verification satisfactory to the Chairman.
 - c. By inserting a new paragraph, which shall be designated as "B.," following said paragraph A., as follows:
 - B. Members of the Board of Assessors shall not receive compensation for their services if they are full-time employees of the City of Marlborough or if they are employed by any vendor or company providing contracted services to the Assessor's Office.

Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Fuel Efficient Vehicle Police Amendment as Follows:

City of Marlborough
FUEL EFFICIENT VEHICLE POLICY

POLICY STATEMENT

In an effort to reduce the City of Marlborough's fuel consumption and energy costs over the next 5 years the City hereby adopts a policy, where practicable, to purchase only fuel efficient vehicles to meet this goal.

PURPOSE

To establish a requirement that the City of Marlborough, use reasonable efforts, to purchase only fuel efficient vehicles for municipal/school use whenever such vehicles are commercially available and practicable.

APPLICABILITY

This policy applies to all divisions and departments of the City of Marlborough.

GUIDELINES

All departments / divisions shall purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable.

The City of Marlborough will maintain an annual vehicle inventory for ALL vehicles and a plan for replacing non-exempt vehicles with vehicles that meet, at a minimum, the fuel efficiency ratings contained in the most recent guidance for Criteria 4 published by the MA Department of Energy Resources' Green Communities Division. This Green Communities' Guidance for Criteria 4 must be checked for updates prior to ordering replacement vehicles; go to: <http://www.mass.gov/eea/docs/doer/green-communities/grant-program/gc-criterion4-guidance.pdf>.

Exemptions

Heavy-duty vehicles such as fire-trucks, ambulances, and public works trucks are exempt from this criterion

Police cruisers are exempt from this criterion. However, municipalities must use reasonable efforts to purchasing fuel efficient cruisers when they become commercially available and practicable. Police department administrative vehicles must meet fuel efficient requirements.

Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Communication from the Mayor re: Public Service Internship Program, **FILE**; adopted.

ORDERED: That the Communication from the Mayor re: Notification of Hopkinton Provision as it relates to the abatement process, **FILE**; adopted.

ORDERED: That the Communication from the Planning Board re: Acceptance of Graves Lane as a Public Way, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 8, 2013**, as date for a **PUBLIC HEARING** for the Application for Special Permit, Bohler Engineering on behalf of McDonald's Restaurant, to improve the aesthetics and operational efficiencies of their restaurant which includes updates to the drive-thru at 155 Boston Post Road West, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MARCH 25, 2013**, as date for a **PUBLIC HEARING** for the Application for Special Permit from Tower 16 Inc., on behalf of AT&T Wireless LLC, to modify an existing telecommunications tower at 75 Donald Lynch Blvd., X-96/97-6754F, refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MARCH 25, 2013** as a date for a **PUBLIC HEARING** on the Application for Fuel Storage License, Partners HealthCare System, Inc., off of Forest Street, to store 60,000 gallons above ground diesel fuel, refer to **PUBLIC SERVICES COMMITTEE, AND ADVERTISE**; adopted.

ORDERED: That the Minutes, Planning Board, January 28, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Community Development Authority, January 29, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Community Development Authority Public Hearing, January 29, 2013 **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, February 8, 2013, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- A. Robert Terrasi, 26 Thomas Drive, residential mailbox claim 2(a)
- B. Elizabeth Krebs Paredes, 34 Nicholas Circle, residential mailbox claim 2(a)
- C. Dan Tran, 39 Desimone Drive, residential mailbox claim 2(b)
- D. Stephen J. & Elizabeth T. Garofalo, 33 Blake Circle, residential mailbox claim 2(b)
- E. Erika Wilson, 41 Naugler Avenue, residential mailbox claim, 2(a)
- F. John Cotting Realty Trust, 74 Main Street, other property damage
- G. Michelle McCormick, 15 Loon Hill Road, Ayer, other property damage

Reports of Committees:

Councilor Elder reported the following out of Urban Affairs Committee:

Order No. 13-1005235A - Proposed Zoning Amendment submitted by City Councilor Patricia Pope to add a definition for “Data Storage/Telecommunications Facility” and to add to the Table of Use Regulations Section 650-17, a category for “Data Storage/Telecommunications Facilities” under “Industrial Uses.” -REFER TO URBAN AFFAIRS AND PLANNING BOARD AND ZONING BOARD; PUBLIC HEARING: DECEMBER 17, 2012

Attorney Bergeron addressed the petition and gave the Committee a summary of the zoning change that will add data storage/telecommunications to the table of uses and a category for the use under industrial uses.

Both President Pope and Councilor Clancy spoke favorably of the change. The Chair noted that making this change is necessary as the city looks forward to Data Storage and Telecommunications uses that weren't in existence when many of these zones were created.

Motion to approve was made by Councilor Clancy and seconded by the chair.

Motion to approve was adopted by a vote of 5-0.

Meeting recessed at 7:06 PM.

Suspension of Rules requested – granted

ORDERED: That the Communication from the Mayor re: Regional Veterans District, refer to **VETERANS AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Police Department transfer request in the amount of \$132,623.00 which moves funds from and to various accounts as noted on the spreadsheet to pay for overtime costs associated with an increased number of vacant positions as well as several injuries, equipment for new hires, and a higher than anticipated need for overtime cell watch for female detainees, **APPROVED**; adopted.

| CITY OF MARLBOROUGH BUDGET TRANSFERS -- | | | | | | | | | | |
|--|--------------|---------------------------------------|--------|----------------------|--------------|---|--------|-------------------------|-------------------|------|
| DEPT: | Police | | | | DATE: | 18-Jan-13 | | | FY: | 2013 |
| FROM ACCOUNT: | | | | TO ACCOUNT: | | | | | | |
| Available Balance | Amount | Org Code | Object | Account Description: | Amount | Org Code | Object | Account Description: | Available Balance | |
| \$1,330,010 | \$113,000.00 | 12100001 | 50420 | Police Officers | \$113,000.00 | 12100003 | 51310 | OT - Regular | \$61,769 | |
| | Reason: | Surplus due to vacancies and injuries | | | | Transfer needed from high use due to vacancies and injuries | | | | |
| \$349,582 | \$10,000.00 | 12100001 | 50820 | Police Sergeants | \$10,000 | 12100003 | 51310 | OT - Regular | \$61,769 | |
| | Reason: | Surplus due to vacancy | | | | Transfer needed from high use due to vacancies and injuries | | | | |
| \$5,370 | \$1,000.00 | 12100003 | 51319 | OT - Cell Watch | \$1,000 | 12100003 | 51195 | Detention Attendant | \$4,656 | |
| | Reason: | Fewer prisoners needing cell watch | | | | Higher than expected female cell watch | | | | |
| \$11,511 | \$6,000.00 | 12100006 | 52450 | Radio Repairs | \$6,000.00 | 12100006 | 51975 | Initial Equipment Issue | \$0 | |
| | Reason: | Fewer repairs needed | | | | Two new hires prior to end of current fiscal year | | | | |
| \$2,773 | \$2,623.00 | 12100004 | 52820 | Paging | \$2,623 | 1192006 | 53420 | Telephone Services | \$67,960 | |
| | Reason: | Number of pagers issued reduced | | | | Number of phones w/data plans increased (Public Facilities Account) | | | | |
| | Reason: | | | | | | | | | |

ORDERED: That the Open Space transfer request in the amount of \$81,000.00 which moves funds from Undesignated to Stabilization-Open Space, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$81,000.00

Undesignated Funds

TO:

Acct. # 83600-32918 \$81,000.00

Stabilization-Open Space

ORDERED: That the Reappointment of David Brumby as Personnel Director for a term of three years upon approval, **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:58 PM.