CITY COUNCIL MEETING AGENDA
1st and 3rd Thursday of the Month

Marc D. Tall, Mayor
Ronald J. Beauchamp, Mayor Pro Tem
Ralph B. Blasier, Council Member
Michael R. Sattem, Council Member
Peggy O. Schumann, Council Member

Patrick S. Jordan, City Manager
Robert S. Richards, CMC City Clerk
Ralph B. K. Peterson, City Attorney

City Council Chambers located at: City Hall – 410 Ludington Street – Room C101 – Escanaba MI 49829

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items with an asterisk (*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

Regular Meeting
Thursday, December 21, 2017, at 7:00 p.m.

CALL TO ORDER
ROLL CALL
INVOCATION/PLEDGE OF ALLEGIANCE – Pastor Erik Heskin of Bethany Lutheran Church
APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting - December 7, 2017
APPROVAL/ADJUSTMENTS TO THE AGENDA
CONFLICT OF INTEREST DECLARATION
BRIEF PUBLIC COMMENT
PUBLIC HEARINGS - None
NEW BUSINESS

1. Approval – Michigan Department of Transportation (MDOT) Performance Resolution for Governmental Agencies – Public Works.
   Explanation: Administration is recommending Council approval of MDOT’s “Performance Resolution for Governmental Agencies” form, which is part of the City’s annual permit to allow work within the State’s right-of-way.

2. Approval – MDOT Roadway Resurfacing Contract #17-5537 – City Manager/City Clerk.
   Explanation: Administration is seeking Council approval of MDOT Contract #17-5537 for roadway resurfacing work along 3rd Avenue North from North Lincoln Road to Stephenson Avenue; including concrete sidewalk ramp, concrete curb and gutter upgrade, paving marking work, and all other necessary related work. Council approval would authorize the City Manager and City Clerk to sign the necessary contracts.

APPOINTMENTS
BOARD, COMMISSION, AND COMMITTEE REPORTS
GENERAL PUBLIC COMMENT
ANNOUNCEMENTS
ADJOURNMENT

Respectfully Submitted

Patrick S. Jordan
City Manager
3. Discussion – Closed Session.

   **Explanation:** Administration wishes to go into Closed Session to Discussion with legal counsel on ongoing litigation.

Respectfully Submitted

Patrick S. Jordan
City Manager
4. **Discussion – County's request for Sidewalk work at new Child Advocacy Center.**

**Explanation:** Delta County Administration is requesting sidewalk work at the new Child Advocacy Center located at the County Service Center. The needs at the new Center require expanding a sidewalk. The County is requesting Public Works crews pour and level the sidewalks, and the Advocacy Center asked for Council’s help by waiving labor costs on expanding the sidewalk.

Respectfully Submitted

Patrick S. Jordan
City Manager
OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, December 7, 2017

The meeting was called to order by the Honorable Mayor Marc D. Tall at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present:    Mayor Marc D. Tall, Council Members, Ronald J. Beauchamp, Michael R. Sattem, and Peggy O’Connell Schumann.

Absent:    Council Member Ralph B. Blasier.

Sattem moved, Schumann seconded, to excuse Council Member Blasier.

Also Present: City Manager Patrick S. Jordan, City Department Heads, members of Escanaba Eskymos Varsity Football Team and Coaches, media, and members of the public.

Pastor Chris Johnson of Christ the King Lutheran Church, gave the invocation and led Council in the Pledge of Allegiance.

Mayor Tall congratulated the 2017 Escanaba Eskymos on their winning season and presented the team and coaches a Proclamation for the 2017 Escanaba Eskymos Varsity Football Team recognizing the them for their time, efforts and fine direction given them which led them to a victorious 2017 season.

Sattem moved, Beauchamp seconded, CARRIED UNANIMOUSLY, to approve Regular Meeting minutes from November 16, 2017, as submitted.

ADJUSTMENTS TO THE AGENDA

Schumann moved, Sattem seconded, CARRIED UNANIMOUSLY, to approve the Agenda as submitted.

CONFLICT OF INTEREST DECLARATION – None

BRIEF PUBLIC COMMENT – None

PUBLIC HEARINGS

Second Reading(s) – Ordinances No. 1190 and 1191 – Ordinances to Amend PILT Ordinances No. 1185 and 1186

Administration recommended the Council amend Ordinances 1185 and 1186 with Ordinances No. 1190 and 1191. Ordinances No. 1185 and 1186 were originally approved on July 6, 2017, these ordinances refer to Payment in Lieu of Taxes (PILT) for the West Highland Apartments and Sand Hill Homes properties. The Michigan State
City Council Minutes
December 7, 2017 – cont.

House Development Authority (MSHDA) required changes/updates to the Ordinances already set into place in which Ordinances No. 1190 and 1191 would encapsulate.

This being a public hearing, Mayor Tall asked if there was any public comment regarding City proposed Ordinances No. 1190 or 1191.

Hearing no public comment, Mayor Tall closed the public hearing.

PH-1a "By Council Member Beauchamp, seconded by Council Member Sattem;

Resolved, That Ordinance No. 1190, an Ordinance to Amend Ordinance No. 1185, Entitled an Ordinance to Amend Chapter 26 – Taxation of the Code of Ordinances of the City of Escanaba, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter."

Herewith Ordinance No. 1190 adopted by title:

"AN ORDINANCE TO AMEND ORDINANCE NO. 1185, ENTITLED AN ORDINANCE TO AMEND CHAPTER 26 - TAXATION OF THE CODE OF ORDINANCES OF THE CITY OF ESCANABA"

Full text in Ordinance Record “K”.

Upon a call of the roll, the vote was as follows:

Ayes: Beauchamp, Sattem, Schumann, Tall
Nays: None

RESOLUTION DECLARED ADOPTED.

PH-1b "By Council Member Sattem, seconded by Council Member Schumann;

Resolved, That Ordinance No. 1191, an Ordinance to Amend Ordinance No. 1186, Entitled an Ordinance to Amend Chapter 26 – Taxation of the Code of Ordinances of the City of Escanaba, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter."

Herewith Ordinance No. 1191 adopted by title:

"AN ORDINANCE TO AMEND ORDINANCE NO. 1186, ENTITLED AN ORDINANCE TO AMEND CHAPTER 26 - TAXATION OF THE CODE OF ORDINANCES OF THE CITY OF ESCANABA"

Full text in Ordinance Record “K”.

Upon a call of the roll, the vote was as follows:
Ayes: Sattem, Schumann, Beauchamp, Tall
Nays: None

RESOLUTION DECLARED ADOPTED.

OLD BUSINESS

Discussion - Follow-up on Bicycles and Skateboards on Downtown Sidewalks.

During the September 7, 2017 City Council Meeting a discussion took place concerning signage on Ludington Street Sidewalks, prohibiting the use of bicycles and skateboards four (4) feet from business fronts. A motion carried unanimously at that meeting to send the issue to the Downtown Development Authority (DDA) for further discussion and their recommendation. Administration requested the Council review the follow-up letter submitted by the DDA.

Manager Jordan, and DDA Director Ed Legault reviewed the recommendation from the DDA as proposed. During discussion, the following was discussed with Council:

- Too many signs already;
- Need to make the public aware of any ordinance changes;
- New ordinance needs to be enforced;
- Public must be aware that the sidewalks needed to be shared;
- Nobody wanted bikes pushed to the streets;
- Look at State law and what other Municipalities do;
- DDA wants people and bikes downtown;
- Suggested item be placed at a work session in February 2018 for further review, and asked the Manager to present to Council samples on what other Municipalities have done.

NEW BUSINESS

Presentation – Phragmites Management.

Lori Mathews and Teri Grout from the Delta Conservation District and the U.P. Resource Conservation & Development Council have been collaborating on Phragmites management in Delta County since 2012. City Council was updated on what has been accomplished so far, what still needs to be done, plans for sustaining Phragmites management in the future, and how this would affect the City of Escanaba.
Discussion with legal counsel and possible action on participating in class action opioid lawsuit.

City Attorney Peterson and Public Safety Director Rob LaMarche reviewed with Council Members on whether or not to join the class-action lawsuit against manufactures of opioids. During discussion, the following was discussed:

- There was an opioid epidemic in Escanaba and Municipalities in Michigan;
- Delta County, and other Counties and Municipalities throughout Michigan, were joining the class action lawsuit in an effort to do something about the national drug problem that had a major influence in the community;
- Attorneys would be paid on a contingency basis, and were fronting the court costs;
- If no funds were awarded from the lawsuit, some court costs may need to be paid, but court costs would be spread out among all cities and counties involved in the lawsuit. The financial cost to the City would be nil due to the number of class-action participants;
- The lawsuit would make the public aware of the drug problem and hopefully force drug companies to stop pumping these drugs into the Counties and Municipalities;
- City deadline to join the lawsuit was December 19, 2017, but stated there could be other lawsuits later on to join;
- The number one problem in the City of Escanaba was related to opioids;
- Angel program and drug court have been trying to deal with the problem.

After further discussion, it was Council consensus to schedule a special meeting to further discuss the issue with a full Council in attendance Friday, December 15, 2017, 9:00 a.m.

Mayor Tall presented former Council Member Pat Baribeau with a plaque thanking her for her service to the City of Escanaba.

APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES – None

BOARD, COMMISSION, AND COMMITTEE REPORTS

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

GENERAL PUBLIC COMMENT – None

ANNOUNCEMENTS
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Council Members wished Mayor Tall a Happy Birthday, and invited everyone in attendance to partake in birthday cake.

Hearing no further public comment, the Council adjourned at 8:15 p.m.

Respectfully submitted

Robert S. Richards, CMC
City Clerk

Approved: ____________________________

Marc D. Tall, Mayor
PERFORMANCE RESOLUTION
FOR GOVERNMENTAL AGENCIES

This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Highway Right of Way", or an "Annual Application and Permit for Miscellaneous Operations within State Highway Right of Way"

RESOLVED WHEREAS, the ____________________________
(city, village, township, etc.)

hereinafter referred to as the "GOVERNMENTAL AGENCY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway Right of Way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL AGENCY agrees that:

1. Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law. This Agreement is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

2. If any of the work performed for the GOVERNMENTAL AGENCY is performed by a contractor, the GOVERNMENTAL AGENCY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the GOVERNMENTAL AGENCY. Failure of the GOVERNMENTAL AGENCY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.

3. Any work performed for the GOVERNMENTAL AGENCY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL AGENCY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL AGENCY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL AGENCY.

4. The GOVERNMENTAL AGENCY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.
5. The GOVERNMENTAL AGENCY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL AGENCY'S facilities according to a PERMIT issued by the DEPARTMENT.

6. With respect to any activities authorized by a PERMIT, when the GOVERNMENTAL AGENCY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

7. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

8. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL AGENCY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL AGENCY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the GOVERNMENTAL AGENCY.

Title and/or Name:

________________________________________________________

________________________________________________________

________________________________________________________

________________________________________________________

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the

________________________________________________________

(Name of Board, etc)

of the __________________________________ of __________________________

(Name of GOVERNMENTAL AGENCY) (County)

at a ___________________________ meeting held on the ______ day

of ______________________ A.D. __________________.

Signed _______________________________ Title _______________________________
December 14, 2017

MEMORANDUM

TO: City Council,
   Patrick S. Jordan, City Manager

FROM: Robert S. Richards, CMC
       City Clerk

SUBJECT: December 21, 2017, Agenda Item – 3rd Avenue North Paving Project

Administration is seeking Council authorization to approve Michigan Department of Transportation (MDOT) Contract #17-5537 – for roadway resurfacing work along 3rd Avenue North from North Lincoln Road (Highway US-2/Highway US-41/Highway M-35) to Stephenson Avenue; including concrete sidewalk ramp, concrete curb and gutter upgrade, and paving marking work; and all together with necessary related work. Additionally, Administration requests Council authorize the City Manager and City Clerk to sign the necessary contracts.
THIS CONTRACT 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 ESCANABA, 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 Escanaba, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I," dated November 21, 2017, attached hereto and made a part hereof:

Roadway resurfacing work along 3rd Avenue North from North Lincoln Avenue (Highway US-2/Highway US-41/Highway M-35) to Stephenson Avenue; including concrete sidewalk ramp, concrete curb and gutter upgrade, and pavement marking work; and all together with necessary related work.

WITNESSETH:

WHEREAS, the State of Michigan is hereinafter referred to as the "State;" and

WHEREAS, the PROJECT has been approved for financing in part with funds from the State appropriated to the Transportation Economic Development Fund, hereinafter referred to as "TED FUNDS," qualifies for funding pursuant to PA 231, Section 11(2)(b); Public Act of 1987, as amended, and is categorized as:

CATEGORY "F" FUNDED PROJECT

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.

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The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering and 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 perform, at no cost to the PROJECT, such administration of the PROJECT covered by this contract as is necessary to assist the REQUESTING PARTY to qualify for funding. Such administration may include performing such review, legal, financing, any other PROJECT related activities as are necessary to assist the REQUESTING PARTY in meeting applicable State requirements.

The DEPARTMENT shall provide the REQUESTING PARTY with a notice to proceed with the award of the construction contract for the PROJECT.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to ensure the PROJECT meets State requirements. Failure to comply with State requirements may result in forfeiture of future distributions of the Michigan Transportation Fund as described in Section 6. No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

4. The REQUESTING PARTY, under the terms of this contract, shall advertise and award the PROJECT work in accordance with the following:

A. The REQUESTING PARTY will, at no cost to the DEPARTMENT or the PROJECT, design, or cause to be designed, the PROJECT, and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT is for its own purposes and is not to nor does it relieve the REQUESTING PARTY of liability for any claims, causes of action or judgments arising out of the design of the PROJECT.

B. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State laws, local ordinances, and State and local standards and regulations.

C. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the contracting procedures to be followed by the REQUESTING PARTY in connection with the solicitation of the construction contract for the PROJECT shall be based on an open competitive bid process. It is understood that the proposal for the PROJECT shall be publicly advertised and the contract awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State statutes, local ordinances, and State and local regulations.

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(1) The REQUESTING PARTY shall not award the construction contract prior to receipt of a notice to proceed from the DEPARTMENT.

(2) Upon verification that contractor selection by the REQUESTING PARTY was made in accordance with the terms of this contract and upon receipt of the “Request for Payment” form from the REQUESTING PARTY, the DEPARTMENT will authorize payment to the REQUESTING PARTY for the eligible amount in accordance with Section 5.

D. The REQUESTING PARTY will, at no cost to the PROJECT or the DEPARTMENT, comply with all applicable State statutes, local ordinances, and State and local regulations, including, but not limited to, those specifically relating to construction contract administration and obtain all permits and approvals with railway companies, utilities, concerned State, Federal, and local agencies, etc., and give appropriate notifications as may be necessary for the performance of work required for the PROJECT.

The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60 and 1996 PA 173, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

E. All work in connection with the PROJECT shall be performed in conformance with the DEPARTMENT’S current Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the PROJECT. All materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. Any changes in the scope of work for the PROJECT will require approval by the DEPARTMENT.

F. The REQUESTING PARTY shall, at no cost to the PROJECT or to the DEPARTMENT, appoint a project engineer who shall administer the PROJECT and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT.
Should the REQUESTING PARTY elect to use consultants for construction engineering and inspection, the REQUESTING PARTY shall provide a full-time project manager employed by the REQUESTING PARTY who shall ensure that the plans and specifications are followed.

G. The REQUESTING PARTY shall require the contractor who is awarded the contract for the construction of the PROJECT to provide, as a minimum, insurance in the amounts specified in and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:

(1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.

(2) 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 party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.

(3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.

5. The PROJECT COST shall be met in part by contributions by TED FUNDS. TED FUNDS Category F shall be applied to the eligible items of the PROJECT COST up to an amount not to exceed the lesser of: (1) 80 percent of the approved and responsible low bid amount, or (2) $157,457, the grant amount. The balance, if any, of the PROJECT COST, after deduction of TED FUNDS, is the sole responsibility of the REQUESTING PARTY.

The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work.

Based upon the final cost of the PROJECT and/or a request by the REQUESTING PARTY, a payment adjustment may be initiated and/or authorized by the DEPARTMENT for eligible items of the PROJECT COST such that the total amount of TED FUNDS does not exceed the grant amount. The REQUESTING PARTY shall certify all actual costs incurred for work performed under this contract that are eligible for payment with TED FUNDS and will be required to repay any TED FUNDS it received in excess of 80 percent of the total of such costs.

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6. The REQUESTING PARTY shall establish and maintain adequate records and accounts relative to the cost of the PROJECT. Said records shall be retained for a period of three (3) years after completion of construction of the PROJECT and shall be available for audit by the DEPARTMENT. In the event of a dispute with regard to allowable expenses or any other issue under this contract, the REQUESTING PARTY shall continue to maintain the records at least until that dispute has been finally decided and the time after all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the records at any reasonable time after giving reasonable notice.

The REQUESTING PARTY, within six (6) months of completion of the PROJECT and payment of all items of PROJECT COST related thereto, shall make a final reporting of construction costs to the DEPARTMENT and certify that the PROJECT has been constructed in accordance with the PROJECT plans, specifications, and construction contract.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the “RESPONSE”. The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a 01/23/03 TEDDIR.FOR 11/29/17
repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT’S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 998-502 and applicable State laws and regulations relative to audit requirements.

7. At such time as traffic volumes or safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (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.
9. 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 to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT. If the REQUESTING PARTY refuses to participate in the cost of remediation, the amount of TED FUNDS the REQUESTING PARTY received from Grant 789.01 shall be forfeited back to the DEPARTMENT.

10. If 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 DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

11. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the State.

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 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 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 is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT 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 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401 et seq. as amended, which is incidental to the completion of the PROJECT.
12. 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 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rest with the REQUESTING PARTY and other local agencies having respective jurisdiction.

13. 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.

14. 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.

15. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party’s liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

16. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix “A” referred to as the “contractor”) agree to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964 being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

17. The REQUESTING PARTY and other local agencies, as applicable parties, understand and agree that the highway(s) or street(s) being improved under the terms of this agreement and funded with Transportation Economic Development Funds, shall not be subject to any restriction by local authorities in using certain commercial vehicles on such highway(s) or street(s). Such restrictions are in conflict with the basic concept of the Transportation Economic Development Program and Funding. The REQUESTING PARTY, by signing this agreement, agrees to obtain concurrence from other local governmental agencies within whose jurisdiction or control the highway(s) or street(s) are being improved.

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18. 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 resolution 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.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF ESCANABA

By ___________________________
Title: __________________________

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By ___________________________
Title: Department Director MDOT

Form Approved
11/29/17

11/29/17

01/23/03 TEDDIR.FOR 11/29/17
EXHIBIT I

CONTROL SECTION
JOB NUMBER
EDF 21000
200523A

ESTIMATED COST

Estimated PROJECT COST
Contracted Work $196,821

ESTIMATED COST PARTICIPATION

GRAND TOTAL ESTIMATED COST $196,821
Less TED FUNDS* $157,457
BALANCE (REQUESTING PARTY'S SHARE) $ 39,364

*TED FUNDS for the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

01/23/03 TEDDIR.FOR  11/29/17
APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual’s ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual’s ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual’s ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers’ representative of the contractor’s commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.
7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor’s books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011