



## CITY COUNCIL MEETING AGENDA

August 3, 2023

Mark Ammel, Mayor  
Karen Moore, Mayor Pro Tem  
Ronald J. Beauchamp, Council Member  
Tyler DuBord, Council Member  
Todd Flath, Council Member

James R. McNeil, City Manager  
Phil DeMay, City Clerk  
Laura J. Genovich, 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, August 3, 2023, at 7:00 p.m.**

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – July 20, 2023

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS

**1. Second Reading, Public Hearing and Adoption of Ordinance No. 1282, An Ordinance to Amend Marihuana Establishment Distancing Regulations within the Zoning Ordinance – Planning & Zoning.**

**Explanation:** Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1282, An Ordinance to Amend Marihuana Establishment Distancing Regulations within the Zoning Ordinance.

**2. Second Reading, Public Hearing and Adoption of Ordinance No. 1283, An Ordinance to Amend Setback-Related Language within the Zoning Ordinance - Planning & Zoning.**

**Explanation:** Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1283, An Ordinance to Amend Setback-Related Language within the Zoning Ordinance.

UNFINISHED BUSINESS – None

NEW BUSINESS

**1. Approval – Concrete Pile Crushing Bid – Public Works.**

**Explanation:** The City of Escanaba received one (1) bid for the concrete pile crushing. Administration is seeking City Council approval to accept the bid from Havelka Construction of Wallace, MI, to have the entire pile of 18,000 tons crushed in the amount of \$99,000.

**2. Approval – Total Patcher – Public Works.**

**Explanation:** Public Works is seeking City Council approval to purchase a used 2012 Total Patcher from Equipment Marketing Company in the amount of \$39,900. This is not a budgeted item.

**3. Approval – V-Box Spreader Salter Insert – Public Works.**

**Explanation:** Public Works received (2) bids for a Salter Insert designed to fit in our current 2013 Tandem Axle dump truck. Public Works is seeking City Council approval to accept the bid from Casper's Truck Equipment of Appleton, WI, in the amount of \$72,906. This is a budgeted item.

Agenda – August 3, 2023

**4. Approval – Epoxy Flooring Bid – Public Works.**

**Explanation:** Public Works received (2) bids for doing epoxy flooring in the Public Works office and an alternate bid for the hallway. Public Works is seeking City Council approval to have Pemble Concrete of Marquette, MI, epoxy the office (\$7,780) and hallway areas (\$1,990), for a total of \$9,770. This is a budgeted item.

**5. Approval – 2023 Pickup Truck – Public Works.**

**Explanation:** Public Works is seeking City Council approval to purchase a 2023 6.4L V8Hemi Ram Tradesman Regular Cab 4x4 from Lanfontaine CDJR-Lansing for \$54,207.90. It includes heavy duty snow plow prep with a plow included in the price. This truck will be used for the Recreation Department. This is not a budgeted item.

**6. Approval – Resolution 23-16 – Authorized Signatory – Manager.**

**Explanation:** Administration is requesting City Council approval of a resolution authorizing the City Manager to sign a contract with MDOT. This contract is for the award of a \$375,000 Small Urban Grant, and is to be used for paving on Stephenson Avenue.

APPOINTMENTS

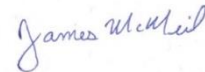
BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

**Respectfully Submitted,**



**James R. McNeil  
City Manager**

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, July 20, 2023**

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

Present: Mayor Mark Ammel, Council Members, Ronald J. Beauchamp, Tyler DuBord, Todd Flath, and Karen Moore

Absent: None

Also Present: City Manager James R. McNeil, City Clerk Phil DeMay, Department Heads, media, and members of the public.

City Clerk DeMay led Council in the Pledge of Allegiance.

DuBord moved, Flath seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from July 6, 2023, as submitted.

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve Work Session minutes from July 12, 2023, as submitted.

**ADJUSTMENTS TO THE AGENDA**

Moore moved, Beauchamp seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**BRIEF PUBLIC COMMENT** – None

**PUBLIC HEARINGS** – None

**UNFINISHED BUSINESS** – None

**NEW BUSINESS**

**NB-1 Approval – Clean Water State Revolving Funds (CWSRF) - Wastewater.**

Administration requested City Council approval to retain C2AE from Escanaba, MI, for engineering services with regard to the City of Escanaba Clean Water State Revolving Funds (CWSRF) in an amount not to exceed \$1,994,000.00 in total.

**NB-1** DuBord moved, Moore seconded, to approve to retain C2AE from Escanaba, MI, for engineering services with regard to the City of Escanaba Clean Water State Revolving Funds (CWSRF) in an amount not to exceed \$1,994,000.00 in total.

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

Ayes: DuBord, Moore, Beauchamp, Flath, Mayor Ammel  
Nays: None

**MOTION CARRIED.**

**NB-2 Approval – Proposed Administrative Consent Order (ACO) with EGLE - Wastewater.**

Administration requested City Council approval to enter into and sign the Proposed Administrative Consent Order (ACO) with EGLE in the amount of \$17,158.84 for administrative fees at the recommendation of the City's attorneys, Foster Swift Collins & Smith, P.C.

**NB-2** DuBord moved, Moore seconded, to approve to enter into and sign the Proposed Administrative Consent Order (ACO) with EGLE in the amount of \$17,158.84 for administrative fees at the recommendation of the City's attorneys, Foster Swift Collins & Smith, P.C.

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

Ayes: DuBord, Moore, Beauchamp, Flath, Mayor Ammel  
Nays: None

**MOTION CARRIED.**

**NB-3 Approval – PFAS Cost Recovery Program - Wastewater.**

Administration requested City Council approval to enter the PFAS Cost Recovery Program at the recommendation of the City's attorneys, Foster Swift Collins & Smith, P.C.

**NB-3** DuBord moved, Flath seconded, to approve to enter the PFAS Cost Recovery Program at the recommendation of the City's attorneys, Foster Swift Collins & Smith, P.C.

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

Ayes: DuBord, Flath, Moore, Beauchamp, Mayor Ammel  
Nays: None

**MOTION CARRIED.**

**NB-4 Approval – Repair of City Hall Condensers - Manager.**

Administration requested City Council approval to obtain the services of Prime Specialty Contracting of Marquette, MI to complete repairs to condensers at City Hall in an amount not to exceed \$13,813. Money was budgeted and available.

**NB-4** Beauchamp moved, DuBord seconded, to approve to obtain the services of Prime Specialty Contracting of Marquette, MI to complete repairs to condensers at City Hall in an amount not to exceed \$13,813.

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

Ayes: Beauchamp, DuBord, Moore, Flath, Mayor Ammel

Nays: None

**MOTION CARRIED.**

**NB-5 Approval – Demolition at 1002 Stephenson Avenue – Manager.**

Administration requested City Council approval to obtain the services of J&S Klee Enterprises of Wilson, MI to demolish and remove the structures, with complete property restoration at 1002 Stephenson Avenue, for an amount not to exceed \$14,500.

**NB-5** Flath moved, DuBord seconded, to approve the services of J&S Klee Enterprises of Wilson, MI to demolish and remove the structures, with complete property restoration at 1002 Stephenson Avenue, for an amount not to exceed \$14,500.

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

Ayes: Flath, DuBord, Moore, Beauchamp, Mayor Ammel

Nays: None

**MOTION CARRIED.**

**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**

- Sidewalk Sales July 29<sup>th</sup> – Street Scape Committee will put on a demonstration.
- Northern Lights Music Festival July 21<sup>st</sup> and 22<sup>nd</sup>.
- RRN Block Party July 28<sup>th</sup>.
- Marina Fest

Hearing no further public comment, Flath moved, DuBord seconded, the Council adjourned at 7:17 p.m.

Respectfully submitted,

Phil DeMay  
City Clerk

Approved: \_\_\_\_\_  
Mark Ammel, Mayor

Agenda Item: PH-1  
Date: 08-03-2023

## City Council Agenda Item Request

Date: July 20, 2023

Name: Tyler Anthony

Department: Planning & Zoning

Item: Second Reading, Public Hearing & Adoption of Ordinance No. 1282

Meeting date requested: 08/03/2023

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1282, An Ordinance to Amend Marihuana Establishment Distancing Regulations within the Zoning Ordinance.

## ORDINANCE NO. 1282

### AN ORDINANCE TO AMEND MARIHUANA ESTABLISHMENT DISTANCING REGULATIONS WITHIN THE ZONING ORDINANCE

THE CITY OF ESCANABA HEREBY ORDAINS:

#### CHAPTER I

*The City of Escanaba Code of Ordinances, Appendix A, also known as the Zoning Ordinance, is hereby amended as follows, with additions in bold text and deletions in strikethrough text:*

~~205.6.2 — Screening. Facilities and establishments must be sufficiently screened or buffered with a fence, wall, or landscape screen to minimize light spillage, odor, and noise (including noise associated with truck traffic or other machinery), affecting adjacent properties.~~

...

205.6.8 – Minimum Distancing Regulations. The following minimum distancing regulations apply to establishments:

1. An establishment may not be located within seven hundred fifty (750) feet of an existing public or private K-12 school.
2. ~~A grower, processor, or safety compliance establishment may not be located within five hundred (500) feet of any existing one-family dwelling.~~ **An establishment may not be located within five hundred (500) feet of a postsecondary education institution.**
3. ~~A retailer may not be located within one hundred (100) feet of any existing one-family dwelling, except that this distance requirement does not apply in the E-3 (Central Commercial) Zoning District.~~ **A grower, processor, or safety compliance establishment may not be located within five hundred (500) feet of zoning districts A, B, C, or C-2.**
4. ~~The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment.~~ **A retailer may not be located within one hundred (100) feet of zoning districts A, B, C, or C-2.**
5. **The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of a lot which contains land uses stated in this subsection, or which is within a zoning district stated in this subsection, to the nearest property line of the parcel used as a marihuana establishment.**

205.6.9 – Provisioning Centers and Retailers. The following requirements apply to provisioning centers and retailers:

1. The interior of the establishment must be arranged in a way such that neither marihuana nor marihuana-infused products are visible from the exterior of the establishment.
2. Consumption of marihuana shall be prohibited in the retail establishment, and a sign shall be posted on the premises of each retail center indicating that consumption is prohibited on the premises.
3. Provisioning centers and retailers shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of 14 days.
4. The public or common areas of the retail establishment must be separated from restricted or non-public areas of the marihuana establishment.
5. No drive-through window on the portion of the premises occupied by a retail establishment shall be permitted.
6. Provisioning centers and retailers shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
7. ~~The exterior appearance of a provisioning center or retailer must be compatible with surrounding businesses with respect to façade type, ground floor opacity, size and placement of signage, site layout, etc.~~
8. ~~Building bays shall be a maximum of thirty (30) feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers, and fenestration pattern. In order to add architectural interest and variety and avoid the~~



~~effect of a single, long or massive wall with no relation to human size, the following additional standards shall apply:~~

- ~~a. No wall that faces a street or connecting walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two of the following: change in plane, change in texture or masonry pattern, windows, or an equivalent element that subdivides the wall into human scale proportions.~~
  - ~~b. Side or rear walls that face walkways may include false windows and door openings defined by frames, sills and lintels, or similarly proportioned modulations of the wall, only when actual doors and windows are not feasible because of the nature of the use of the building.~~
  - ~~c. All sides of the building shall include materials and design characteristics consistent with those on the front. Use of inferior or lesser quality materials for side or rear façades shall be prohibited.~~
- ~~9. Façades that face streets or connecting pedestrian frontage shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, along no less than fifty percent of the façade.~~
- ~~10. Primary building entrances shall use clear glass and be clearly defined and recessed or framed by a sheltering element such as an awning, arcade, or portico in order to provide shelter from the inclement weather.~~
- ~~11. Windows shall have clear glass.~~
- ~~12. Awnings shall be no longer than a single storefront.~~
- ~~13. All façades shall have:~~
- ~~a. A recognizable “base” consisting of, but not limited to:~~
    - ~~i. Thicker walls, ledges, or sills;~~
    - ~~ii. Integrally textured materials such as stone or other masonry;~~
    - ~~iii. Integrally colored and patterned materials such as smooth-finished stone or tile;~~
    - ~~iv. Lighter or darker colored materials, mullions, or panels; or~~
    - ~~v. Planters.~~
  - ~~b. A recognizable “top” consisting of, but not limited to:~~
    - ~~i. Cornice treatments, other than just colored “stripes” or “bands,” with integrally textured materials such as stone or other masonry or differently colored materials;~~
    - ~~ii. Sloping roof with overhangs and brackets; or~~
    - ~~iii. Stepped parapets.~~
- ~~14. Encroachments for special architectural features, such as bay windows, decorative roofs and entry features may be considered; however, in no case may such features be below a height of 8 feet.~~

...

903.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Local Business District if a special land use permit is issued according to the standards of this Ordinance:

- A. Public garages, repair shops, gasoline service stations, and other motor fueling filling stations.
- B. Medical marijuana provisioning centers authorized under the Medical Marijuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and retailers and microbusinesses (up to 150 plants) authorized under the Michigan Regulation and Taxation of Marijuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, **recreational marijuana retailers, and recreational marijuana microbusinesses (up to 150 plants).**
- C. The Planning Commission may authorize principle and other uses not stated in the district where the land is located, provided that such uses are consistent with the neighborhood, intent of this chapter, and the standards set forth herein.

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1003.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Commercial District if a special land use permit is issued according to the standards of this chapter:

- A. Places of assembly on Ludington Street between 2nd Street and 22nd Street.
- B. Public garages, repair shops, gasoline service stations and other motor fuel filling stations.
- C. Public garages, business, public or quasi-public, and commercial vehicle parking.

- D. Multiple family dwellings, with the following requirements:
- a. i. Buildings or structures hereafter erected shall not occupy more than seventy-five (75) percent of the area of the lot.
  - b. ii. Ten (10) percent of the total lot area shall remain open green space.
  - c. iii. One indigenous tree per 1,000 square feet, or fraction thereof, of gross floor area must be included.
  - d. iv. The minimum required setback distance on all sides of the property is ten (10) feet for the first two (2) stories, plus an additional ten (10) feet for each additional story.
  - e. v. All other standards not specifically mentioned in this list shall follow the standards set forth in the relevant sections of the zoning ordinance.
- E. ~~The Planning Commission may authorize principle and other uses not stated in the district where the land is located, provided that such uses are consistent with the intent of this chapter and the standards set forth herein~~ **Medical marihuana provisioning centers, recreational marihuana retailers, and recreational marihuana microbusinesses (up to 150 plants).**
- F. **The Planning Commission may authorize principle and other uses not stated in the district where the land is located, provided that such uses are consistent with the intent of this chapter and the standards set forth herein.**

...

1102.2 – Uses Allowed By Special Land Use Permit. This section establishes uses allowed by Special Land Use Permit in a Planned Commercial Development District.

- A. ~~Marihuana Provisioning Centers, Retailers, and Microbusinesses.~~ Medical marihuana provisioning centers authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and retailers and microbusinesses (up to 150 plants) authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, **recreational marihuana retailers, and recreational marihuana microbusinesses (up to 150 plants).**

...

Section 1203 – Uses Permitted in a Special Planned District.

- A. Places of assembly, public or parochial schools, colleges, public library, museums.
- B. Private educational institutions when operated primarily for the purpose of giving preparatory education similar in education, similar in character to that provided in the public schools or kindergartens, nursery schools, and similar institutions for children of pre-school age.
- C. Parks, playgrounds, school or college stadiums, or athletic fields, golf courses.
- D. In sparsely settled and unplatted areas, a hospital, clinic, convent, home (see definition of home in Section I), dormitory or other buildings or like character, occupied or to be occupied more or less permanently (but not including penal or correctional institutions, or institutions for the care of the mentally ill or for the liquor or drug addicts).
- E. Special care facilities.
- F. Bed and breakfast uses, subject to compliance with provisions defined in the Bed and Breakfast Ordinance.
- G. Multiple and two-family dwellings.
- H. Professional offices for accountants, architects, attorneys, engineers, insurance brokers, real estate brokers, title and abstract firms, and other similar service professions.
- I. Offices of lending institutions and financial institutions, including banks, credit unions, brokerage firms, savings and loan associations, and mortgage companies. Office uses shall not include drive-through service facilities.
- J. Medical and dental offices, nonemergency primary care facilities, medical diagnosis facilities.
- K. State and Federal offices.
- L. Funeral homes.
- M. Assisted living service care facility.
- N. ~~Marihuana Provisioning Centers, Retailers, and Microbusinesses.~~ Medical marihuana provisioning centers authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and retailers and microbusinesses (up to 150 plants) authorized under the Michigan Regulation and Taxation of Marihuana Act,

~~Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, recreational marihuana retailers, and recreational marihuana microbusinesses (up to 150 plants).~~

- O. The Planning Commission may authorize principal and other uses not stated provided that such uses are consistent with the intent of this chapter and the standards set forth herein.

...

1303.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Light Manufacturing District if a special land use permit is issued according to the standards of this chapter:

- A. Wireless telecommunication facility with Planning Commission approval as outlined in Chapter 2, Administration, Enforcement and Penalty, Section 205, Special Land Use Permit Approval.
- B. Penal or correctional institutions.
- C. Public garages, repair shops, gasoline service stations.
- D. Business, public or quasi-public, or commercial vehicle parking.
- E. Special care facilities subject to the following conditions:
  - 1. i. A special use permit must be approved by the Planning Commission.
  - 2. ii. The allowable number of total occupants shall not exceed six (6) within any one thousand five hundred-foot radius.
  - 3. iii. All applicants for special use permits must demonstrate that there will be adequately trained personnel to staff or manage the type of facility being proposed.
- F. Sexually Oriented Businesses. A sexually oriented business may be allowed and shall be known as a regulated use and shall only be permitted with the following restrictions:
  - 1. i. The use must be located outside a five hundred-foot radius of a residential district, a place of assembly, school, or daycare center and outside a five hundred-foot radius of an officially dedicated park and the regulated use is not located within a one thousand five hundred-foot radius of another regulated use. All measurements under this section shall be made in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the regulated use or building containing a regulated use to the nearest property line of the residential district, place of assembly, school, daycare center, or park.
  - 2. ii. Persons operating a regulated use shall not permit any person under the age of eighteen (18) to be on the premises of said regulated use either as an employee or as a customer.
  - 3. iii. The maximum hours of operation of the regulated use shall be from 8:00 a.m. to 12:00 p.m.
  - 4. iv. Sexually oriented products or services or any picture or other representation thereof, shall not be displayed so as to be visible from the street or neighboring property.
  - 5. v. Off-street parking shall be provided the same as other businesses of a similar nature that are not sexually oriented (e.g. movie theaters, retail sales and eating and drinking establishments), except that all parts of the parking area shall be illuminated from dusk until one (1) hour after the business closes.
  - 6. vi. Once established, a regulated use shall not be expanded in any manner without first applying for and receiving a special land use permit amendment from the Planning Commission.
  - 7. vii. If a regulated use is discontinued and events cause the areas to not be available for the location of a regulated use, the use may not be reestablished without applying for and receiving an amended special land use permit from the Planning Commission.
  - 8. ~~The Planning Commission may authorize principle and other uses not stated provided that such uses are consistent with the intent of this chapter and the standards set forth herein.~~
- G. ~~Marihuana Class A Grower and Safety Compliance Facilities. Medical marihuana class A Growers and, medical marihuana safety compliance facilities authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and adult use recreational marihuana class A growers, and recreational marihuana safety compliance facilities authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance.~~

**H. The Planning Commission may authorize principle and other uses not stated provided that such uses are consistent with the intent of this chapter and the standards set forth herein.**

...

1403.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Industrial Park District if a special land use permit is issued according to the standards of this Ordinance:

- A. Wireless telecommunication facility.
- B. Restaurant, hotel.
- C. ~~Marihuana Class A Growers and Safety Compliance Facilities.~~ Medical marihuana class A growers and, **medical marihuana** safety compliance facilities authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and adult-use marihuana Class A Growers and Safety Compliance Facilities authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, **recreational marihuana class A growers, and recreational marihuana safety compliance facilities.**
- D. The Planning Commission may authorize principle and other uses not stated provided that such uses are consistent with the intent of this chapter and the standards set forth herein.

...

1503.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Heavy Manufacturing District if a special land use permit is issued according to the standards of this chapter:

- A. Wireless telecommunication facility with Planning Commission approval as outlined in Chapter 2, Administration, Enforcement and Penalty, Section 205, Special Land Use Permit Approval.
- B. Public garages, repair shops, gasoline station or other motor fueling stations.
- C. ~~Marihuana Class B Growers, Class C Growers, and Safety Compliance Facilities.~~ Medical marihuana class B and C growers and, **medical marihuana** safety compliance facilities authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and adult-use marihuana Class B and C Growers and Safety Compliance Facilities authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, **recreational marihuana class B and C growers, and recreational marihuana safety compliance facilities.**
- D. The Planning Commission may authorize principle and other uses not stated provided that such uses are consistent with the intent of this chapter and the standards set forth herein.

...

2103.1 – General. The following uses of land and buildings, together with accessory uses, are allowed in the Central Retail Commercial District if a special land use permit is issued according to the standards of this chapter:

- A. Eating and drinking places which include drive-in service.
- B. Banks and other financial institutions which provide drive-in services.
- C. Outdoor vendors. Open air markets.
- D. Hotels, Motels, Inns, Bed and Breakfast, and similar lodging uses.
- E. Condominium, Townhouse, Multiplex, Apartment, and other multifamily residential.
- F. ~~Marihuana Provisioning Centers, Retailers, and Microbusinesses.~~ Medical marihuana provisioning centers authorized under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 et seq, and retailers and microbusinesses (up to 150 plants) authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq, subject to Ordinance 1269 of the City Code of Ordinances and Section 205 of this Zoning Ordinance, **recreational marihuana retailers, and recreational marihuana microbusinesses (up to 150 plants).**

**CHAPTER II**  
**SAVINGS CLAUSE**

If any section, subsection, sentence, clause, or phrase of this Ordinance is held to be unconstitutional, such decision shall not affect the validity of the remainder of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

**CHAPTER III**  
**CONFLICTING ORDINANCES REPEALING CLAUSE**

All other Ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

**CHAPTER IV**  
**EFFECTIVE DATE**

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

\_\_\_\_\_  
Laura Genovich, City Attorney

\_\_\_\_\_  
Mark Ammel, Mayor

Ordinance No. \_\_\_\_\_

ATTEST:

Date Approved: \_\_\_\_\_

Date Published: \_\_\_\_\_

\_\_\_\_\_  
Phil DeMay, City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on \_\_\_\_\_ and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on \_\_\_\_\_, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

\_\_\_\_\_  
Phil DeMay, City Clerk

Agenda Item: PH-2  
Date: 08-03-2023

## City Council Agenda Item Request

Date: July 20, 2023

Name: Tyler Anthony

Department: Planning & Zoning

Item: Second Reading, Public Hearing & Adoption of Ordinance No. 1283

Meeting date requested: 08/03/2023

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1283, An Ordinance to Amend Setback-Related Language within the Zoning Ordinance.

ORDINANCE NO. 1283

AN ORDINANCE TO AMEND SETBACK-RELATED LANGUAGE WITHIN THE  
ZONING ORDINANCE

THE CITY OF ESCANABA HEREBY ORDAINS:

**CHAPTER I**

*The City of Escanaba Code of Ordinances, Appendix A, also known as the Zoning Ordinance, is hereby amended as follows, with additions in **bold text** and deletions in ~~strikethrough text~~:*

Building means any structure designed or built for the enclosure, shelter or protection of persons, animals, chattels, or property of any kind. ~~Unconventional enclosed structures, such as shipping containers, may be classified as “buildings” if they meet all of the requirements of a building pursuant to this ordinance~~ **Such a structure may be partially or wholly enclosed.**

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Building, Height of means the vertical distance from the grade to the highest point on a mansard, Quonset, or flat roof. In the case of a gable, hip, or gambrel roof, height is measured to the median vertical distance between the eaves and ridge.

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~~Front lot line. In the case of a lot abutting upon only one (1) street, the front lot line is the line separating such lot from such street. In the case of a lot abutting on two (2) or more streets, one (1) lot line shall be elected to be the front lot line for the purposes of this Ordinance, provided, it shall be so designated on the building plans filed for approval with the Zoning Administrator.~~

Frontage means the total continuous width of the front lot line. **In the case of a corner lot or through lot, frontage means the total continuous width of the primary front lot line.**

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~~Height of building means the vertical distance from the grade to the highest point on a mansard, Quonset, flat roof or to the median height between the eaves and the ridge for gable, hip and gambrel roofs.~~

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~~Interior side lot line. An interior side lot line is a side line separating a lot from another lot or lots.~~

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Lot, Corner means a lot ~~which has at least~~ **having frontage on** two (2) **or more** contiguous sides abutting on and at the intersection of two (2) or more streets.

...

Lot, Through means a lot ~~which has at least two (2) contiguous sides abutting on and at the intersection of~~ **having frontage on** two (2) or more streets **which are not contiguous and do not intersect at any corner of the lot.**

Lot Coverage means the part or percentage of the lot occupied by buildings and structures.

Lot Depth means the distance between the front and rear lot lines as measured perpendicular to the front lot line. In the case of a corner or through lot, the distance shall be measured from the primary front lot line.

Lot Line, Front means the property line which abuts a street. In the case of a corner lot or through lot, all property lines which abut a street shall be considered a front lot line for the purposes of this Ordinance. In the case of a lot which has not been

cleared or developed before, one (1) front lot line shall be elected as the primary front lot line, provided it shall be so designated on plans filed with the Zoning Administrator.

**Lot Line, Primary Front** means the property line abutting a street upon which the property has its address.

**Lot Line, Rear** means the property line which is opposite and most distant from the front lot line. In the case of a corner lot, the rear lot line shall be that which is opposite and most distant from the primary front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.

**Lot Line, Side** means any property line which is not a front or rear lot line.

~~Lot Width means the horizontal distance between side lot lines measured parallel to the front lot line at the minimum required front setback line.~~

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~~Rear lot line. The rear lot line is that boundary which is opposite and most distant from the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.~~

...

**Setback** means the minimum distance required between a lot line and a building wall as measured to the roof edge or any other projection.

~~Setback, Front. "Front setback" means the minimum setback required distance, extending the full lot width, between the principal any building and the front lot line, extending the full lot width.~~

~~Setback, Rear. "Rear setback" means the minimum setback required distance, extending the full lot width, between the principal and accessory buildings any building and the rear lot line opposite the front line, extending the full lot width.~~

~~Setback, Side. "Side setback" means the minimum setback required distance between any building and the side lot line, extending from the front setback to the rear setback, between the principal building and accessory building and the side lot line.~~

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~~Side Lot Line. A side lot is any lot boundary line not a front lot line or a rear lot line.~~

...

## Section 505 – Yards and Setbacks

505.1 – Front Yard Requirement **Setback.** In a Residence A District there shall be a front yard on every lot. **Front setbacks shall be twenty-five (25) feet or thirty-five (35) percent of the depth of the lot, whichever is less restrictive, but not less than fifteen (15) feet. However, for lots located on the same side of the street and between the same consecutive intersecting streets as other occupied lots of which at least fifty (50) percent have front yards in depths other than that required above, the front setback shall be not less than the average depth of those front yards.**

505.1.1 – Front Yard. ~~Every front yard shall be at least twenty-five (25) feet or thirty-five (35) percent of the depth of the lot (whichever is least restrictive) as measured at right angles from the front lot line to the nearest part of the principal building located on the lot, provided however, that on lots located on the same side of the street and between the same consecutive intersecting streets as other lots of which at least fifty (50) percent are occupied by uses wherein the depths of the front yard are other than that required above, the depth of the front yard shall be not less than the average depth of the front yards of such occupied lots. In no case are the provisions of this section to require a front yard depth in excess of thirty-five (35) percent of the average depth of the lot nor less than~~



~~fifteen (15) feet.~~ **Corner Lots, Through Lots.** On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.

**505.1.2 – Front Yard Setback Use.** The front yard setback shall not only be used for off-street parking from April 2 to November 30 when winter parking restrictions are in effect., and The front yard shall remain as open space, unoccupied and unobstructed from the ground upward except for landscaping, plant materials, or vehicle access drives.

**505.2 – Side Yard Requirement Setback.** In a Residence A District there shall be on each side of every lot a side yard. Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of fifteen (15) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than forty-five (45) feet.

**505.2.1 – Minimum Side Yard.** The minimum side yard for residential structures shall be ten (10) percent of the width of the lot with a total of twenty-five (25) percent of the lot required for both side yards; provided, however, that no side yard shall have a width of less than four (4) feet and this shall be increased by four (4) feet for each story by which a building erected on a lot exceeds two (2) stories in height. And provided, however, that no minimum interior side yard shall be required to exceed fifteen (15) feet nor shall the total side yards be required to exceed forty-five (45) feet.

**505.2.2 – Side Yard Width.** The width of a side yard abutting upon a street shall not be less than the minimum front yard depth required on an adjoining interior lot fronting upon such side street but this shall not reduce the buildable width of any lot of record at the time of passage of this Ordinance to less than thirty (30) feet at the ground story level; provided, however, that in no case shall the width of said side yard be less than eight (8) feet.

**505.2.3 – Other Buildings.** For any building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons, in numbers in excess of fifty (50), or for any telephone exchange, police or fire station, the width of each side yard shall not be less than twelve (12) feet, and in addition thereto the width of each side yard shall be increased four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50), for the accommodation of whom the building is designed, arranged, remodeled, or normally used, except that for portions of such building of fire resistant construction and entirely without movable windows or other openings, an increase of only two (2) feet for each twenty-five (25) persons or major fraction thereof in excess of fifty (50) shall be required.

**505.3 – Rear Yard Requirement Setback.** In a Residence A District there shall be a rear yard on every lot. Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).

**505.3.1 – Minimum Rear Yard.** The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principle building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story. The depth of a rear yard abutting upon a street shall be not less than the depth of the front yard required for a building of the same size and kind on an adjoining lot fronting on such rear street.

**505.3.2 – Other Buildings.** On a lot occupied by a building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons in numbers in excess of fifty (50), the depth of the rear yard shall be increased by four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50).

**505.4 – Through Lots and Corner Lots.** Through lots and corners lots having a frontage on two (2) streets shall provide the required setback on both streets.

**505.5 505.4 – Other Requirements.**

~~505.5.1~~ **505.4.1 – Storage.** Storage of a boat, motor home, camper, utility trailer or other recreational vehicle or equipment is limited to rear and side yard only. Storage shall mean parking the vehicle or equipment in an area unused for the purpose for which it was designed for a period of thirty (30) consecutive days or more.

~~505.5.2~~ **505.4.2 – Lots Along Railroad Right-of-Way or Property.** Any lot created or recorded after October 1, 2003, that is adjacent to or along a railroad right-of-way, shall not be used for any residential purpose unless it has a depth of at least two hundred fifty (250) feet.

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**509.1 – Separation Distancing.** Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent ~~lot~~ **lots** or accessory building on the same lot.

**509.2 – Front Yard Space.** ~~Detached~~ accessory buildings ~~may~~ **shall** not occupy front yard space.

**509.3 – Rear Yard Area, Setbacks.** Accessory buildings ~~and portions thereof~~ may occupy up to fifty (50) percent of the required rear yard space ~~except, where a rear yard abuts for its full width upon a street, said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street.~~ **Rear setback for accessory buildings is five (5) feet.**

**509.4 – Side Yard, Setbacks.** ~~No portion of any accessory building shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~ **Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

**509.5 – Accessory Height.** Accessory buildings ~~building height~~ shall not exceed eighteen (18) feet ~~in height from ground floor to mean height or the height of the principal building, whichever is less.~~

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~~513.3 – Street-Side Side Yards.~~ ~~All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~513.4~~ **513.3 – Maintenance.** All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

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**Section 605 – Yards and Setbacks.**

**605.1 – Front Yard Requirement Setback.** ~~In a Residence B District there shall be a front yard on every lot.~~ **Front setbacks shall be twenty-five (25) feet or thirty-five (35) percent of the depth of the lot, whichever is less restrictive, but not less than fifteen (15) feet. However, for lots located on the same side of the street and between the same consecutive intersecting streets as other occupied lots of which at least fifty (50) percent have front yards in depths other than that required above, the front setback shall be not less than the average depth of those front yards.**

**605.1.1 – Front Yard.** ~~Every front yard shall be at least twenty-five (25) feet or thirty-five (35) percent of the depth of the lot (whichever is least restrictive) as measured at right angles from the front lot line to the nearest part of the principal building located on the lot, provided however, that on lots located on the same side of the street and between the same consecutive intersecting streets as other lots of which at least fifty(50) percent are occupied by uses wherein the depths of the front yard are other than that required above, the depth of the front yard shall be not less than the average depth of the front yards of~~

~~such occupied lots. In no case are the provisions of this section to require a front yard depth in excess of thirty-five (35) percent of the average depth of the lot nor less than fifteen (15) feet.~~ **Corner Lots, Through Lots.** On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.

**605.1.2 – Front Yard Setback Use.** The front yard setback shall ~~not only~~ be used for off-street parking ~~from April 2 to November 30 when winter parking restrictions are in effect.~~, and **The front yard** shall remain as open space, unoccupied and unobstructed from the ground upward except for landscaping, plant materials, or vehicle access drives.

**605.2 – Side Yard Requirement Setback.** In a Residence B District there shall be on each side of every lot a side yard. **Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of fifteen (15) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than forty-five (45) feet.**

~~605.2.1 – Minimum Side Yard. The minimum side yard for residential structures shall be ten (10) percent of the width of the lot with a total of twenty-five (25) percent of the lot required for both side yards; provided, however, that no side yard shall have a width of less than four (4) feet and this shall be increased by four (4) feet for each story by which a building erected on a lot exceeds two (2) stories in height. And provided, however, that no minimum interior side yard shall be required to exceed fifteen (15) feet nor shall the total side yards be required to exceed forty-five (45) feet.~~

**605.2.2 – Side Yard Width Courts.** The width of a side yard abutting upon a street shall not be less than the minimum front yard depth required on an adjoining interior lot fronting upon such side street but this shall not reduce the buildable width of any lot of record at the time of passage of this ordinance to less than thirty (30) feet at the ground story level; provided, however, that in no case shall the width of said side yard be less than eight (8) feet. **For all residential buildings greater than thirty (30) feet in depth, side setbacks shall be increased to create side courts. Beginning at a point thirty (30) feet from the front setback, those side setbacks shall be increased by four (4) feet plus one (1) inch for each foot of such building depth greater than thirty (30) feet.”**

~~605.2.3 – Other Buildings. For any building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons, in numbers in excess of fifty (50), or for any telephone exchange, police or fire station, the width of each side yard shall not be less than twelve (12) feet, and in addition thereto the width of each side yard shall be increased four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50), for the accommodation of whom the building is designed, arranged, remodeled, or normally used, except that for portions of such building of fire resistant construction and entirely without movable windows or other openings, an increase of only two (2) feet for each twenty-five (25) persons or major fraction thereof in excess of fifty (50) shall be required.~~

~~605.2.4 – Distance. On a lot occupied by a residential building having a greater depth than thirty (30) feet, there shall be provided, contiguous to the side yard or side lot line, an outer court or courts of such width that all portions of the building in excess of thirty (30) feet in depth shall be distant from the side lot line not less than four (4) feet plus one (1) inch for each foot of such depth in excess of thirty (30) feet.~~

**605.3 – Rear Yard Requirement Setback.** In a Residence B District there shall be a rear yard on every lot. **Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).**

~~605.3.1 – Minimum Rear Yard. The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principle building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story. The depth of a rear yard~~

~~abutting upon a street shall be not less than the depth of the front yard required for a building of the same size and kind on an adjoining lot fronting on such rear street.~~

~~605.3.2 Other Buildings. On a lot occupied by a building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons in numbers in excess of fifty (50), the depth of the rear yard shall be increased by four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50).~~

~~605.4 Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

~~605.5~~ **605.4 – Other Requirements.**

~~605.5.1~~ **605.4.1 – Storage.** Storage of a boat, motor home, camper, utility trailer or other recreational vehicle or equipment is limited to rear and side yard only. Storage shall mean parking the vehicle or equipment in an area unused for the purpose for which it was designed for a period of thirty (30) consecutive days or more.

~~605.5.2~~ **605.4.2 – Lots Along Railroad Right-of-Way or Property.** Any lot created or recorded after October 1, 2003, that is adjacent to or along a railroad right-of-way, shall not be used for any residential purpose unless it has a depth of at least two hundred fifty (250) feet.

...

~~609.1 – Separation~~ **Distancing.** Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent ~~lot~~ **lots** or accessory building on the same lot.

~~609.2 – Front Yard Space.~~ ~~Detached~~ accessory buildings ~~may~~ **shall** not occupy front yard space.

~~609.3 – Rear Yard Area,~~ **Setbacks.** Accessory buildings and ~~portions thereof~~ may occupy up to fifty (50) percent of the required rear yard space ~~except, where a rear yard abuts for its full width upon a street, said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street.~~ **Rear setback for accessory buildings is five (5) feet.**

~~609.4 – Side Yard,~~ **Setbacks.** ~~No portion of any accessory building shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet. Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.~~

~~609.5 – Accessory Height.~~ Accessory buildings **building height** shall not exceed eighteen (18) feet ~~in height from ground floor to mean height~~ or the height of the principal building, whichever is less.

...

~~613.3 – Street-Side Side Yards.~~ All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.

~~613.4~~ **613.3 – Maintenance.** All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

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Section 705 – **Yards and Setbacks.**

~~705.1 – Front Yard Requirement~~ **Setback.** In a Residence C District there shall be a front yard ~~on every lot.~~ **Front setbacks shall be twenty-five (25) feet or thirty-five (35) percent of the depth of the lot, whichever is less restrictive, but not less than fifteen (15) feet. However, for lots located on the same side of the street and between the**

**same consecutive intersecting streets as other occupied lots of which at least fifty (50) percent have front yards in depths other than that required above, the front setback shall be not less than the average depth of those front yards.**

~~705.1.1 – Front Yard. Every front yard shall be at least twenty-five (25) feet or thirty-five (35) percent of the depth of the lot (whichever is least restrictive) as measured at right angles from the front lot line to the nearest part of the principal building located on the lot, provided, however, that on lots located on the same side of the street and between the same consecutive intersecting streets as other lots of which at least fifty (50) percent are occupied by uses wherein the depth of the front yards are other than that required above, the depth of the front yard shall be not less than the average depth of the front yards of such occupied lots. In no case are the provisions of this section to require a front yard depth in excess of thirty-five (35) percent of the average depth of the lot nor less than fifteen (15) feet.~~ **Corner Lots, Through Lots. On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.**

**705.1.2 – Front Yard Setback Use.** The front yard setback shall ~~not~~ **only** be used for off-street parking ~~from April 2 to November 30 when winter parking restrictions are in effect.~~, and **The front yard** shall remain as open space, unoccupied and unobstructed from the ground upward except for landscaping, plant materials, or vehicle access drives.

~~705.2 – Side Yard Requirement~~ **Setback.** In a Residence C District there shall be on each side of every lot a side yard. **Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of fifteen (15) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than forty-five (45) feet.**

~~705.2.1 – Minimum Side Yard. The minimum side yard for residential structures shall be ten (10) percent of the width of the lot with a total of twenty-five (25) percent of the width of the lot required for both side yards; provided, however, that no side yard shall have a width of less than four (4) feet and this shall be increased by four (4) feet for each story by which a building erected on a lot exceeds two (2) stories in height.~~

**705.2.2 – Side Yard Width Courts.** The width of a side yard abutting upon a street shall ~~not be less than the minimum front yard depth required on an adjoining interior lot fronting upon such side street but this shall not reduce the buildable width of any lot of record at the time of the passage of this Ordinance to less than thirty (30) feet at the ground story level; provided however, that in no case shall the width of said side yard be less than eight (8) feet.~~ **For all residential buildings greater than thirty (30) feet in depth, side setbacks shall be increased to create side courts. Beginning at a point thirty (30) feet from the front setback, those side setbacks shall be increased by four (4) feet plus one (1) inch for each foot of such building depth greater than thirty (30) feet.**

~~705.2.3 – Other Buildings. For any building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons, in numbers in excess of fifty (50), or for any telephone exchange, police or fire station, the width of each side yard shall be increased by four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50).~~

~~705.2.4 – Depth. On a lot occupied by a residential building having a greater depth than thirty (30) feet, there shall be provided, contiguous to the side yard or side lot line, an outer court or courts of such width that all portions of the building in excess of thirty (30) feet in depth shall be distant from the side lot line not less than four (4) feet plus one (1) inch for each foot of such depth in excess of thirty (30) feet.~~

**705.3 – Rear Yard Requirement Setback.** In a Residence C District there shall be a rear yard on every lot. **Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).**

~~705.3.1 – Minimum Rear Yard. The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principal~~

~~building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story. The depth of a rear yard abutting upon a street shall be not less than the depth of the front yard required for a building of the same size and kind of an adjoining lot fronting on such rear street.~~

~~705.3.2 — Other Buildings. On a lot occupied by a building other than a dwelling, in which persons congregate, or which is designed, arranged, remodeled, or normally used for the congregation of persons in numbers in excess of fifty (50), the depth of the rear yard shall be increased in addition to other required increased (increases), herein, four (4) feet for each twenty-five (25) persons or major fraction thereof, in excess of fifty (50), for the accommodation of whom the building is designed, arranged, remodeled, or normally used, except that for portions of such building entirely of fire resistant construction and entirely without movable windows or other openings an increase of only two (2) feet for each twenty-five (25) persons or major fraction thereof in excess of fifty (50) shall be required.~~

~~705.4 — Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

~~705.5~~ **705.4 – Other Requirements.**

~~705.5.1~~ **705.4.1 – Storage.** Storage of a boat, motor home, camper, utility trailer or other recreational vehicle or equipment is limited to rear and side yard only. Storage shall mean parking the vehicle or equipment in an area unused for the purpose for which it was designed for a period of thirty (30) consecutive days or more.

~~705.5.2~~ **705.4.2 – Lots Along Railroad Right-of-Way or Property.** Any lot created or recorded after October 1, 2003, that is adjacent to or along a railroad right-of-way, shall not be used for any residential purpose unless it has a depth of at least two hundred fifty (250) feet.

...

**709.1 – Separation Distancing.** Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent lot **lots** or accessory building on the same lot.

**709.2 – Front Yard Space.** Accessory buildings ~~may~~ **shall** not occupy front yard space.

**709.3 – Rear Yard Area, Setbacks.** Accessory buildings ~~and portions thereof may occupy up to fifty (50) percent of the required rear yard space except, where a rear yard abuts for its full width upon a street, said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street.~~ **Rear setback for accessory buildings is five (5) feet.**

**709.4 – Side Yard, Setbacks.** ~~No portion of any accessory building shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~ **Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

**709.5 – Accessory Height.** Accessory buildings ~~building height~~ **building height** shall not exceed eighteen (18) feet in height from ground floor to mean height or the height of the principal building, whichever is less.

...

~~713.3 — Street-Side Side Yards. All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~713.4~~ **713.3 – Maintenance.** All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

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## Section 905 – Yards and Setbacks.

905.1 – Front Yard Requirement **Setback**. This front yard lot **setbacks** shall be at least twenty-five (25) feet or thirty-five (35) percent of the depth of the lot ~~(whichever is least restrictive) as measured at right angles from the front lot line to the nearest part of the principal building located on the lot, provided,~~ **whichever is less restrictive, but not less than fifteen (15) feet**. However, ~~that on for~~ lots located on the same side of the street and between the same consecutive intersecting streets as other occupied lots of which at least fifty (50) percent ~~are occupied by uses wherein the~~ **have** front yards in depths are other than that required above, the ~~depth of the front yard~~ **front setback** shall be not less than the average depth of those front yards of such occupied lots. ~~In no case are the provisions of this section to require a front yard depth in excess of thirty-five (35) percent of the average depth of the lot nor less than fifteen (15) feet.~~

905.1.1 – Principal Use Corner Lots, Through Lots. ~~When the nonconforming principal use is of a residential nature the requirements of the nearest Residential District shall apply.~~ **On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.**

905.2 – Side Yard Requirement **Setback**. ~~In a Local Business District there shall be two (2) side yards on each lot. The minimum side yard shall be at least ten (10) percent of the width of the lot, with a total of twenty-five (25) percent of the width of the lot required for both side yards, provided, however, that no side yard shall be less than four (4) feet in width and that the minimum width of each side lot shall be increased by four (4) feet for each story by which the building exceeds two (2) stories in height.~~ **Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of fifteen (15) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than forty-five (45) feet.**

905.2.1 ~~Side Yard Width. The width of a side yard abutting upon a street shall not be less than the minimum front yard depth required on an adjoining interior lot fronting upon such side street but this shall not reduce the buildable width of any lot of record at the time of the passage of this Ordinance to less than thirty (30) feet at the ground story level; provided, however, that in no case shall the width of said side yard be less than eight (8) feet.~~

905.3 – Rear Yard Requirement **Setback**. ~~The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principal building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story.~~ **Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).**

905.3.1 ~~Depth. The depth of a rear yard abutting upon a street shall not be less than the depth of the front yard required for a building of the same size and kind on an adjoining lot fronting on such rear street.~~

905.4 ~~Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

...

909.1 – General **Distancing**. ~~The following is a list of Accessory Buildings/Private Garages requirement for a Local Business District:~~

- ~~A. Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent lot or accessory building on the same lot.~~
- ~~B. Accessory buildings may not occupy front yard space.~~
- ~~C. Accessory buildings and portions thereof may occupy up to fifty (50) percent of the required rear yard space except, where a rear yard abuts for its full width upon a street,~~

- ~~said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street.~~
- ~~D. No portion of any accessory building and/or private garage shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~
- ~~E. Accessory buildings shall not exceed eighteen (18) feet in height from ground floor to mean height or the height of the principal building, whichever is less.~~
- ~~F. Exterior Finish. Accessory buildings shall be compatible in design and appearance to the principal building. Shipping containers shall be either painted or covered in a siding material that would typically be utilized for a principal building.~~

**Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent lot or accessory building on the same lot.**

**909.2 – Front Yard. Accessory buildings shall not occupy front yard space.**

**909.3 – Rear Yard, Setbacks. Accessory buildings may occupy up to fifty (50) percent of the required rear yard space. Rear setback for accessory buildings is five (5) feet.**

**909.4 – Side Yard, Setbacks. Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

**909.5 – Height. Accessory building height shall not exceed eighteen (18) feet or the height of the principal building, whichever is less.**

**909.6 – Exterior Finish. Accessory buildings shall be compatible in design and appearance to the principal building. Shipping containers shall be either painted or covered in a siding material that would typically be utilized for a principal building.**

...

~~912.3 – Street-Side Side Yards. All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~912.4~~ **912.3 – Maintenance.** All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

...

**Section 1005 – Yards and Setbacks.**

~~1005.1 – Front Yard Requirement~~ **Setback. Front setbacks shall be zero (0) feet for non-residential uses.**

~~1005.1.1 – Front Yard. No front yard is required where the principal use is of a commercial nature, except where the commercial use is on the same side of the street in a block zoned for both commercial and residential uses, in which case the front yard requirement for the residential zone concerned shall govern, provided, however, that relief from this requirement may be obtained in certain cases as prescribed in Chapter 3, Board of Zoning Appeals.~~

~~1005.1.2~~ **1005.1.1 – Front Yard Requirement Residential Uses.** When the principal use is of a residential nature the requirements of the nearest residential district shall apply. **On a lot occupied by a residential primary use, the front setback requirements of the nearest zoning districts A, B, or C shall apply.**

~~1005.2 – Side Yard Requirement~~ **Setback. Side setbacks shall be zero (0) feet for non-residential uses.**

~~1005.2.1 – Commercial Nature. No side yards are required when the principal use is of a commercial nature.~~



~~1005.2.2~~ **1005.2.1 – Residential Nature Uses.** ~~When the principal use is of a residential nature the requirements of the nearest residential district shall apply. On a lot occupied by a residential primary use, the side setback requirements of the nearest zoning districts A, B, or C shall apply.~~

~~1005.3 – Rear Yard Requirement~~ **Setback.** ~~In a Commercial District there shall be a rear yard of at least twenty-five (25) feet in depth on every lot as measured at right angles from the rear lot line to the nearest part of the principal building. Rear setbacks shall be twenty-five (25) feet.~~

~~1005.4 – Through Lots and Corner Lots.~~ ~~Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

...

~~Section 1009.1 – Separation~~ **Distancing.** ~~Accessory buildings shall be at least ten (10) feet from any dwelling situated on the same lot and at least six (6) feet from any other building on adjacent lot~~ **lots** ~~or accessory building on the same lot.~~

~~1009.2 – Front Yard Space.~~ ~~Accessory buildings may~~ **shall** ~~not occupy front yard space.~~

~~1009.3 – Rear Yard Space,~~ **Setbacks.** ~~Accessory buildings and portions thereof may occupy up to fifty (50) percent of the required rear yard space except where a rear yard abuts for its full width upon a street said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street. Rear setback for accessory buildings is five (5) feet.~~

~~1009.4 – Side Yard, Setbacks.~~ ~~No portion of an accessory building shall approach nearer to a side yard or rear lot line than three (3) feet nor nearer to a rear lot line than five (5) feet. Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.~~

~~1009.5 – Accessory Height.~~ ~~Accessory buildings~~ **building height** ~~shall not exceed eighteen (18) feet in height from ground floor to mean height or the height of the principal building, whichever is less.~~

...

~~1011.3 – Street-Side Side Yards.~~ ~~All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~1011.4~~ **1011.3 – Maintenance.** ~~All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.~~

~~1011.5~~ **1011.4 – Screening.** ~~The Planning Commission at their discretion may require vehicle storage areas be screened from abutting property and from public view from a public street.~~

...

**Section 1305 – Yards and Setbacks.**

~~1305.1 – Front Yard Requirement~~ **Setback.** ~~In a Light Manufacturing District there shall be a front yard on every lot. This front yard lot shall be at least twenty (20) feet in depth as measured at right angles from the front lot line to the nearest part of the principal building located on the lot. Front setbacks shall be twenty (20) feet.~~

**1305.1.1 – Corner Lots, Through Lots.** **On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.**

~~1305.2 – Side Yard Requirement~~ **Setback.** ~~In a Light Manufacturing District there shall be two (2) side yards on each lot. The minimum side yard shall be at least ten (10) percent~~

~~of the width of the lot, with a total of twenty-five (25) percent of the width of the lot required for both side yards, provided, however, that no side yard shall be less than four (4) feet in width and that the minimum width of each side lot shall be increased by two (2) feet for each story by which the building exceeds two (2) stories in height, and, provided however, that no minimum side yard shall be required to exceed twenty (20) feet or shall be total side yard be required to exceed fifty (50) feet.~~ **Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of twenty (20) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than fifty (50) feet.**

~~1305.3 – Rear Yard Requirement~~ **Setback.** ~~In a Light Manufacturing District there shall be a rear yard on every lot. The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principal building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story. The depth of a rear yard abutting upon a street shall not be less than the depth of the front yard required for a building of the same size and kind on an adjoining lot fronting on such rear street.~~ **Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).**

~~1305.4 – Through Lots and Corner Lots.~~ ~~Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

...

~~1309.1 – Distances~~ **Distancing.** ~~Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on an adjacent lot~~ **lots** ~~or accessory building on the same lot.~~

~~1309.2 – Front Yard Space.~~ ~~Accessory buildings may~~ **shall** ~~not occupy front yard space.~~

~~1309.3 – Rear Yard Space,~~ **Setbacks.** ~~Accessory buildings and portions thereof may occupy up to fifty (50) percent of the required rear yard space except where a rear yard abuts for its full width upon a street, said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot abutting on such street.~~ **Rear setback for accessory buildings is five (5) feet.**

~~1309.4 – Side Yard, Setbacks.~~ ~~No portion of an accessory building shall approach nearer to a side rear lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~ **Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

~~1309.5 – Accessory Height.~~ ~~Accessory buildings~~ **building height** ~~shall not exceed thirty (30) feet in height from ground floor to mean height.~~

...

~~1311.3 – Street Side Side Yards.~~ ~~All flanking street side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~1311.4~~ **1311.3** – **Maintenance.** ~~All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.~~

...

Section 1405 – **Yards and Setbacks.**

~~1405.1 – Front Yard Requirement~~ **Setback.** ~~In an Industrial Park District there shall be a front yard on every lot. This front yard lot shall be at least twenty (20) feet in depth as~~

measured at right angles from the front lot line to the nearest part of the principal building located on the lot. Front setbacks shall be twenty (20) feet.

**1405.1.1 –Corner Lots, Through Lots. On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.**

~~1405.2 – Side Yard Requirement~~ **Setback.** In an Industrial Park District there shall be two (2) side yards on each lot. The minimum side yard shall be at least ten (10) percent of the width of the lot, with a total of twenty-five (25) percent of the width of the lot required for both side yards, provide, however, that no side yard shall be less than four (4) feet in width and that the minimum width of each side lot shall be increased by two (2) feet for every story by which the building exceeds two (2) stories in height, and, provided however, that no minimum side yard shall be required to exceed twenty (20) feet nor shall the total side yard be required to exceed fifty (50) feet. On corner lots, the side yard adjacent to the street shall have the same setback as the front yard requirements. **Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of twenty (20) feet. For each building story over two (2), an additional two (2) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than fifty (50) feet.**

~~1405.3 – Rear Yard Requirement~~ **Setback.** In an Industrial Park District there shall be rear yard on every lot. The minimum rear yard shall be twenty (20) feet in depth as measured at right angles from the rear lot line to the nearest part of the principal building on each lot upon which a one-story principal building is located. On lots occupied by other than one-story principal buildings, the minimum depth of the required rear yard shall be increased by four (4) feet for each additional story. **Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).**

~~1405.4 – Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

...

~~1409.1 – Front Yard Space. Accessory buildings may not occupy front yard space.~~ **Distancing. Accessory buildings shall be at least ten (10) feet from any primary building situation on the same lot and at least six (6) feet from any other building on an adjacent lot or from an accessory building on the same lot.**

~~1409.2 – Rear Yard Space. Accessory buildings and portions thereof may occupy up to fifty (50) percent of the depth of the required rear yard space except where a rear yard abuts for its full width upon a street, said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required to the same lot and abutting on such street.~~ **Front Yard. Accessory buildings shall not occupy front yard space.**

~~1409.3 – Accessory Height. Accessory buildings shall not exceed thirty (30) feet in height from ground floor to mean height or the height of the principal building, whichever is less.~~ **Rear Yard, Setbacks. Accessory buildings may occupy up to fifty (50) percent of the required rear yard space.**

~~1409.4 – Separation. Accessory buildings shall be at least ten (10) feet from any primary building situation on the same lot and at least six (6) feet from any other building on an adjacent lot or from an accessory building on the same lot.~~ **Side Yard, Setbacks. Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

~~1409.5 – Setbacks. No portion of any accessory building shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~ **Height. Accessory building height shall not exceed eighteen (18) feet or the height of the principal building, whichever is less.**

...

~~1411.3 — Street-Side Side Yards. All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~1411.4~~ **1411.3** – Maintenance. All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

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#### Section 1505 – Yards and Setbacks.

~~1505.1 – Front Yard Requirement~~ **Setback.** ~~In a Heavy Manufacturing District there shall be a front yard on every lot. This front yard shall be at least twenty (20) feet in depth as measured at right angles from the front lot line to the nearest part of the structures, stockpiles or outdoor equipment and material storage located on the lot.~~ **Front setbacks shall be twenty (20) feet. This also applies to materials stockpiles & storage areas and outdoor equipment storage areas.**

**1505.1.1 – Corner Lots, Through Lots.** On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.

~~1505.2 – Side Yard Requirement~~ **Setback.** ~~In a Heavy Manufacturing District there shall be two (2) side yards on every lot. The minimum side yard shall be twenty (20) feet as measured from the nearest part of the principal building to the side lot line. Accessory buildings or material stockpiles may be located up to ten (10) feet of the side lot line.~~ **Side setbacks shall be twenty (20) feet. For materials stockpiles & storage areas and outdoor equipment storage areas, a side setback of ten (10) feet shall apply.**

~~1505.3 – Rear Yard Requirement~~ **Setback.** ~~In a Heavy Manufacturing District there shall be a rear yard on every lot. The minimum rear yard shall be twenty (20) feet in depth as measured from the rear lot line to the nearest part of the principal building on each lot upon which a one-story principal building is located, provided, however, that the owner of a lot in either of these districts may elect to provide for an open court of at least three hundred (300) square feet to be used for loading and unloading purposes. The minimum dimension of such court shall be ten (10) feet.~~ **Rear setbacks shall be twenty (20) feet.**

~~1505.4 — Through Lots and Corner Lots.~~ Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.

...

~~1510.3 — Street-Side Side Yards. All flanking street-side side yards shall be completely landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.~~

~~1510.4~~ **1510.3** – Maintenance. All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

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#### Section 1605 – Yards and Setbacks.

~~1605.1 – Front Yard Requirement~~ **Setback.** ~~In an Open Space District there shall be a front yard on every parcel.~~ **Front setbacks shall be thirty (30) feet. However, for lots located on the same side of the street within two hundred (200) feet of other occupied lots, the front setback shall equal the average depth of those front yards. This also applies to parking areas.**

~~1605.1.1 – Building~~ **Corner Lots, Through Lots.** ~~No new building or building addition shall be erected closer to the street than average setback of the buildings within two hundred (200) feet on either side. Where there are no buildings, the minimum setback is thirty (30) feet.~~ On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of

**any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.**

~~1605.1.2 — Parking Area. Behind or to the side of the principal building and setback a distance equal to the setback of the principal building or twenty-five (25) feet, whichever is greater. For through lots, parking may be provided streetward of the principal building on the street that carries less traffic, but in no case closer than twenty-five (25) feet from the front property line.~~

~~1605.2 – Side Yard Requirement~~ **Setback.** ~~In an Open Space District there shall be on each side of every parcel a side yard. Side setbacks shall be ten (10) feet. This also applies to parking areas.~~

~~1605.2.1 — Minimum Side Yard. The minimum side yard in an Open Space District shall be ten (10) feet. The total side yard for an Open Space District shall not be less than twenty (20) feet.~~

~~1605.2.2 — Parking Area. If contiguous to a Residential District, a minimum of ten (10) feet. Otherwise, five (5) feet. If shared parking is developed, these setbacks would affect only the perimeter of the combined parcels.~~

~~1605.3 – Rear Yard Requirement~~ **Setback.** ~~In an Open Space District there shall be a rear yard on every parcel. Rear setbacks shall be thirty (30) feet.~~

~~1605.3.1 — Building. No new building or building addition shall be erected without having a thirty-foot rear yard.~~

~~1605.4 — Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

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#### Section 2105 – Yards and Setbacks.

~~2105.1 – Front Yard Setback. The required front yard setback must be zero (0) to five (5) feet. Front setbacks shall be zero (0) feet minimum, and five (5) feet maximum.~~

~~2105.2 – Side Yard Setback. No side yards are required. Side setbacks shall be zero (0) feet.~~

~~2105.3 – Rear Yard Setback. In a Central Commercial District there shall be a rear yard of at least twenty-five (25) feet in depth on every lot as measured at right angles from the rear lot line to the nearest part of the principal building. Rear setbacks shall be twenty-five (25) feet.~~

~~2105.4 — Through Lots and Corner Lots. Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.~~

...

~~2109.1 – Distances~~ **Distancing.** Accessory buildings shall be at least ten (10) feet from any primary building situated on the same lot and at least six (6) feet from any other building on adjacent lot **lots** or accessory building on the same lot.

~~2109.2 – Front Yard Space. Accessory buildings may~~ **shall** not occupy front yard space.

~~2109.3 – Side Yard Space. Accessory buildings and portions thereof may not occupy side yard space. Rear Yard, Setbacks. Accessory buildings may occupy up to fifty (50) percent of the required rear yard space. Rear setback for accessory buildings is five (5) feet.~~

~~2109.4 – Rear Yard Space. Accessory buildings and portions thereof may occupy up to fifty (50) percent of the required rear yard space except where a rear yard abuts for its full width upon a street said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street. Side Yard, Setbacks.~~

**Accessory buildings may occupy side yards. Side setback for accessory buildings is three (3) feet.**

2109.5 – ~~Accessory~~ Height. Accessory buildings **building height** shall not exceed eighteen (18) feet ~~in height from ground floor to mean height~~ or the height of the principal building, whichever is less.

~~2109.7 – Setbacks. No portion of any accessory building shall approach nearer to a side lot line than three (3) feet nor nearer to a rear lot line than five (5) feet.~~

**CHAPTER II**  
**SAVINGS CLAUSE**

If any section, subsection, sentence, clause, or phrase of this Ordinance is held to be unconstitutional, such decision shall not affect the validity of the remainder of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

**CHAPTER III**  
**CONFLICTING ORDINANCES REPEALING CLAUSE**

All other Ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

**CHAPTER IV**  
**EFFECTIVE DATE**

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

\_\_\_\_\_  
Laura Genovich, City Attorney

\_\_\_\_\_  
Mark Ammel, Mayor

Ordinance No. \_\_\_\_\_

ATTEST:

Date Approved: \_\_\_\_\_

Date Published: \_\_\_\_\_

\_\_\_\_\_  
Phil DeMay, City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on \_\_\_\_\_ and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on \_\_\_\_\_, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

\_\_\_\_\_  
Phil DeMay, City Clerk

Agenda Item: NB-1  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7-26-23

Name: Kent Dubord

Department: Public Works

Item: Concrete Pile Bid

Meeting date requested: 8-3-23

Explanation for request:

The City of Escanaba received one (1) bid for the concrete pile crushing. The bid is for \$5.50 a ton from Havelka Construction to do the crushing. We are seeking approval to have Havelka Construction do the work. We are looking for approval to have the entire pile of 18,000 tons crushed into 22A and 21AA gravel material. Seeking approval for \$99,000 to have the entire pile crushed.

The 22A and 21AA gravel will be used for street projects. The current concrete pile hasn't been addressed in a long time and is currently occupying a tremendous amount of space in the compost area. By grounding up the material we can use it and sell some material to pay for a portion of the costs. The work is expected to be completed by October 30th, 2023.







Agenda Item: NB-2  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7-26-23

Name: Kent Dubord

Department: Public Works

Item: Total Patcher

Meeting date requested: 8-3-23

Explanation for request:

Public Works is looking for approval to purchase a used 2012 Total Patcher from Equipment Marketing Company. The total cost including freight is \$39,900. Currently we have been using the AMZ machine we purchased from the county several years ago. It is soon to need repairs that are going to cost around \$3,000. The total patcher is a lot more efficient piece of equipment with the capabilities to not only AMZ, but sealcoat as well. It will use 1/3 less material, with much less excess material. The newer machine has a lot less wear points and is a much better designed piece of equipment. This is not a budgeted item.

# Total Patcher – **USED Model T-7500**

## Quote

Attn: ESCANABA STREET DEPT.

Equipment Marketing Co  
P.O. Box 697  
Cloverdale, Indiana 46120  
Phone / Fax (765) 795-2277

**Made In Indiana – Made In Indiana – Made In Indiana – Made In Indiana – Made In Indiana – Made In Indiana**

To: City of Escanaba Street Department

Ship to: Quote only

QUOTE DATE	PLACED BY	DATE DELIVERED	SHIP VIA	F.O.B.	TERMS
July 25, 2023	Cliff Dickehut	Quote Only	EMC Truck	Customer Yard	30 days net prox. Or lease with no payment for a year.

QTY.	DESCRIPTION	PRICE Ea	TOTAL
1 each	<b>USED Total Patcher Model T-7500, MACHINE. (MADE IN INDIANA)</b> , with all standard equipment, pintle hitch, includes arrow board at no additional charge. Machine has less than 3,500 hours. <b><u>Comes with a 6 month warranty.</u></b>	\$39,900.00	\$39,900.00
1 each	OPTIONAL Water Flush System	Included	Included
1 each	OPTIONAL Crack Sealing system	Included	Included
	<b><u>NOTE: This machine is subject to prior sale. Let me know if you want us to hold it for you until you can take it to your Council. Let the water department and the wastewater department each pay 1/3 of the cost as they are always cutting up your streets.</u></b>		

SALES TAX

Exempt

QUOTE TOTAL

**\$ 39,900.00**

Freight

**N/C**

**TOTAL**

**\$39,900.00**



Equipment  
Marketing  
Company  
Tel: (781) 759-2277

FOR PARTS AND SERVICE  
CONTACT  
EQUIPMENT MARKETING CO.  
PO BOX 759-2277 OR  
TOTALPATCHER@GMAIL.COM  
EQUIPMENTMARKETINGCOMPANY.COM

**TOTAL PATCHER**

**T7500**

Agenda Item: NB-3  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7-27-23

Name: Kent Dubord

Department: Public Works

Item: V-Box Spreader Salter Insert

Meeting date requested: 8-3-23

Explanation for request:

Public Works recieved (2) bids for a Salter Insert designed to fit in our current 2013 Tandem Axle dump truck. The larger truck will be able to hold 2-200 gallon tanks of brine and 11 yard capacity of salt. The insert will allow for use of a wing truck on the salter route.

Public Works is seeking approval to purchase from Casper's Truck Equipment in the amount of \$72,906. We would have the piece of equipment by December 1st and be able to utilize it this winter. The current salter truck would then be used as a back up salter this coming winter. This is a budgeted item part of the Deicing truck(Wing Truck).

PRESENT:

Randy  
Kent Dubord  
Tim Roper  
Tony Kell



# Henderson

## FSH™

### ***Heavy-duty Precision Spreaders to Match Any Need or Budget***

The legendary Henderson FSH sand and salt spreader is now available in three versions. The FSH-I, II and III, each having subtle differences to better meet customer needs and varying specification requirements.

The core features of the FSH are retained "across the board" on all three models: rugged construction, controlled delivery of material to the road surface and low maintenance design. All models come in a wide variety of

sizes to accommodate length, height and capacity requirements.

The FSH can be powered hydraulically, using an electric motor or through the use of a stand alone diesel engine. Multiple control, conveyor and pre-wet options are also available.

Henderson has a heavy-duty spreader that's perfect for any operation or budget. The FSH; built to perform.



- Inside seams are continuously welded for extreme duty. Sides and ends are 10-gauge and floor is 7-gauge steel.
- Top edge of hopper is a formed "J" channel for added rigidity and strength.
- Conveyor is 24" wide, all steel pintle-type chain. The FSH-I and II have 1/4" x 1-1/2" crossbars while the FSH-III has 3/8" x 1-1/2" crossbars. Crossbars are spaced on 4-1/2" centers. Sprockets are cast iron and are keyed to the drive and idler shafts to prevent slippage and maintain chain alignment.
- Conveyor chain is protected by a formed 10-gauge shield in the FSH-I and II. A replaceable bolt-in shield is standard on the FSH-III and optional on the FSH-II.
- Two 5/8" stainless steel chain adjusters with 4" of idler adjustment provide optimum chain tension.
- **OPTIONAL** - single or dual augers for reduced maintenance and a consistent material flow.
- **OPTIONAL** - conveyor gearbox has thru-shaft for electronic control system speed sensor hook-up.
- **OPTIONAL** - 3/4 hp electric motor and high efficiency helical bevel gearbox. Multiple control options available.
- The hydraulic or electric motor is mounted directly to the gear case to eliminate sprockets, chains and couplers for reduced maintenance.
- The telescopic chute assembly is 10-gauge steel and is totally enclosed with two internal adjustable baffles. Three external adjustable deflectors and one front fixed deflector with overlapping corners also contribute to accurate control of material spread pattern. A quick latching bypass chute diverts material behind the spinner chute for fast unloading.
- The 20" dia. spinner disk with replaceable hub and six (6) vanes are constructed of 10-gauge stainless steel. Poly disk is optional.
- All surfaces are high-pressure cleaned and degreased with a phosphate solution before being primed and finish painted with Highway Orange paint.

*The  
Dependable  
Ones™*

**HEAVY-DUTY SALT & SAND V-BOX SPREADER**

Agenda Item: NB-4  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7-26-23

Name: Kent Dubord

Department: Public Works

Item: Epoxy Flooring Bid

Meeting date requested: 8-3-23

Explanation for request:

Public Works recieved (2) bids for doing epoxy flooring in the Public Works office and an alternate bid for the hallway. Seeking approval to have Pemble Concrete epoxy the office (\$7,780) and hallway areas (\$1,990), total of \$9,770; once the old tile flooring is taken out this fall/ winter.

The flooring is in poor condition and has been cracking for several years. It continues to crack and break apart in different areas. It's stained from wearing down over the years and is in need of being replaced. This is a budgeted item.

## CITY OF ESCANABA RECORD OF BIDS

**DATE BIDS OPENED:** July 26, 2023  
**DESCRIPTION OF ITEM:** Escanaba DPW Epoxy Floor - 2023

[illegible]

**PRESENT:**

Kent Dubord  
Troy Bell  
Tim Rios



Agenda Item: NB-5  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7-27-23

Name: Kent Dubord

Department: Public Works

Item: 2023 Pickup Truck

Meeting date requested: 8-3-23

Explanation for request:

Public Works is looking to purchase a 2023 6.4L V8Hemi Ram Tradesman Regular Cab 4x4 from Lanfontaine CDJR-Lansing for \$54,207.90. It includes heavy duty snow plow prep with a plow included in the price. This truck will be used for the Recreation Department. This is not a budgeted item.

# LaFontaine CDJR-Lansing

6131 S. Pennsylvania Ave.

Lansing, MI 48911

517-394-1022-Direct

517-394-1205-Fax

[mdeacon@lafontaine.com](mailto:mdeacon@lafontaine.com)

Name: City of Escanaba

Address:

City: State: Mi Zip:

Contact: Kent Dubord

Phone: 906.786.1842

Email: [kdubord@escanaba.org](mailto:kdubord@escanaba.org)

Date: 7/26/2023

Quote 072623

State of Michigan Contract #071B7700183	
2023 Ram Tradesman Reg Cab 4x4	\$44,989.00
2GA 6.4L V8 Hemi	
PW7 Bright White	
TXX8 HD Vinyl 40/20/40 Split Bench Seat	
AHD Heavy Duty Snow Plow Prep	
special equipment	\$9,118.90
Per contract delivery is \$2.00 a mile one way mileage.	
By signing the purchase agreement you agree to purchase of the vehicle or	
vehicles X	
Total Cost:	
\$54,107.90	

Signed Michelle Deacon

Agenda Item: NB-6  
Date: 08-03-23

## City Council Agenda Item Request

Date: 7/26/2023

Name: James McNeil

Department: Manager

Item: Resolution - Authorized Signatory

Meeting date requested: 8/3/2023

Explanation for request:

Administration is requesting City Council approval of a resolution authorizing the City Manager to sign a contract with MDOT. This contract is for the the award of a \$375,000 Small Urban Grant, and is to be used for paving on Stephenson Avenue.

## RESOLUTION 23-16

Council Member \_\_\_\_\_ offered the following resolution and moved for its adoption:

Be it resolved that

CONTRACT No. 23-5304, Control Section STUL 21000, Job Number 208209CON

by and between the

MICHIGAN DEPARTMENT OF TRANSPORTATION

and the

CITY OF ESCANABA

is hereby accepted.

The following Official(s) is/are authorized to sign the said contract:

James McNeil, City Manager

Supported by Council Member \_\_\_\_\_

ADOPTED: AYES: \_\_\_\_\_  
NAYES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

I hereby certify that the foregoing is a true and correct copy of a resolution made and adopted at  
a regular meeting of the \_\_\_\_\_ on the  
\_\_\_\_\_ DAY of \_\_\_\_\_ [MONTH] \_\_\_\_\_ [YEAR] \_\_\_\_\_.

Signed \_\_\_\_\_  
[TITLE]

STP

DA

Control Section	STUL 21000
Job Number	208209CON
Project	23A0671
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	23-5304

### PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made 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 Escanaba, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated July 5, 2023, attached hereto and made a part hereof:

#### PART A – FEDERAL PARTICIPATION

Hot mix asphalt pavement removal, earthwork, aggregate base and hot mix asphalt paving along Stephenson Avenue from approximately 185 feet south of 9<sup>th</sup> Avenue to 17<sup>th</sup> Avenue; and all together with necessary related work.

#### PART B – NO FEDERAL PARTICIPATION

Hot mix asphalt pavement removal, earthwork, aggregate base and hot mix asphalt paving along 9<sup>th</sup> Avenue from Washington Avenue to Stephenson Avenue; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

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

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

SURFACE TRANSPORTATION PROGRAM

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

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

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

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

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

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

The Michigan Department of Environment, Great Lakes, and Energy has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to Michigan Department of Environment, Great Lakes, and Energy. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

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

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

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

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

- C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

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

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

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$375,000, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

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

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

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

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

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

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

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

9. The REQUESTING PARTY certifies that it is not aware if and has no reason to believe that the property on which the work is to be performed under this agreement is a facility, as defined by the Michigan Natural Resources and Environmental Protection Act [(NREPA), PA 451, 1994, as amended 2012]; MCL 324.20101(1)(s). The REQUESTING PARTY also certifies that it is not a liable party pursuant to either Part 201 or Part 213 of NREPA, MCL 324.20126 et seq. and MCL 324.21323a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will acquire property for the use of either a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release of any hazardous materials at or on the property. The REQUESTING PARTY is not a person who is liable for response activity costs, pursuant to MCL 324.20101 (vv) and (ww).

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

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

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



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

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the contract documents. It is understood that the REQUESTING PARTY shall own the facilities and shall operate and maintain the facilities in accordance with all applicable Federal and State laws and regulations, including, but not limited to, Title II of the Americans with Disabilities Act (ADA), 42 USC 12131 et seq., and its associated regulations and standards, and DEPARTMENT Road and Bridge Standard Plans and the Standard Specifications for Construction.

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

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

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. 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.

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF ESCANABA

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

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

By \_\_\_\_\_  
*for* Department Director MDOT

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



July 5, 2023

EXHIBIT I

CONTROL SECTION	STUL 21000
JOB NUMBER	208209CON
PROJECT	23A0671

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$973,100	\$202,900	\$1,176,000

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$973,100	\$202,900	\$1,176,000
Less Federal Funds*	<u>\$375,000</u>	<u>\$ 0</u>	<u>\$ 375,000</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$598,100	\$202,900	\$ 801,000

\*Federal Funds for the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

DOT

TYPE B  
BUREAU OF HIGHWAYS  
03-15-93

## PART II

### STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

## SECTION I

### COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
  - 1. Engineering
    - a. FAPG (6012.1): Preliminary Engineering
    - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
    - c. FAPG (23 CFR 635A): Contract Procedures
    - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
  - 2. Construction
    - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
    - b. FAPG (23 CFR 140B): Construction Engineering Costs
    - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
    - d. FAPG (23 CFR 635A): Contract Procedures
    - e. FAPG (23 CFR 635B): Force Account Construction
    - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
  - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
  - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
  - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
  - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
  - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
  - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
  - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

## SECTION II

### PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.



- F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

### SECTION III

#### ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for 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.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

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 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 assessment of interest will begin thirty (30) days from the date of the invoice. 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, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package  
The Data Collection Form  
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than \$500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education  
Accounting Service Center  
Hannah Building  
608 Allegan Street  
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number \_\_\_\_\_", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than \$1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).
5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.



## SECTION IV

### MAINTENANCE AND OPERATION

- A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

- a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

- b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

- c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

- d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

## SECTION V

### SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. 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 the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

## 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

## APPENDIX B TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
  - a. Withholding payments to the contractor until the contractor complies; and/or
  - b. Canceling, terminating, or suspending the contract, in whole or in part.



6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

## **APPENDIX C**

### **TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES**

#### **Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)**

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:**

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:**

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.