



CITY COUNCIL MEETING AGENDA

January 18, 2024

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, January 18, 2024, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – January 4, 2024

Work Session – January 9, 2024

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS

1. Public Hearing – Citizen Participation – 2024-25 Fiscal Year Budget Preparation.

Explanation: Each year, Council holds public hearings to facilitate input from citizens for the upcoming FY2024-25 fiscal year budget. This is the first of five (5) scheduled public hearings.

UNFINISHED BUSINESS – None

NEW BUSINESS

1. Presentation - Audit - City Controller.

Explanation: Paul Matz of the audit firm Rehmann will give a presentation of the 06/30/2023 audit results.

2. Approval – TMF (Technical, Managerial, and Financial) -LSLR Grant Application - Water.

Explanation: Administration is requesting City Council approval to hire and retain the services of C2AE of Escanaba, MI to assist the City of Escanaba Water Department in preparing an application for the TMF-LSLR Grant Funding to verify water service line materials in an amount not to exceed \$1,500.00.

3. Approval - Energy Optimization Program – Electric.

Explanation: Administration is seeking approval for the 2024 Energy Optimization Program in the amount of \$150,000. This is a budgeted item. The Electrical Advisory Committee supports and recommends this program.

4. Approval – Concrete Pile Bid – DPW

Explanation: Administration is seeking approval to hire Havelka Construction in the amount of \$22,000 to crush the remaining concrete pile.

5. Approval – MERS Withdrawal and Asset Transfer Agreement – Manager.

Explanation: Administration is requesting City Council approval of the MERS Defined Benefit Plan Withdrawal and Asset Transfer Agreement.

Agenda – January 18, 2024

6. Approval – MDOT Performance Resolution for Municipalities – Manager

Explanation: Administration is requesting City Council approval of a resolution for the annual permit for work in the State Highway Right of Way.

APPOINTMENTS

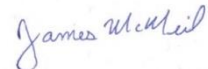
BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

Respectfully Submitted

A handwritten signature in blue ink that reads "James R. McNeil".

James R. McNeil
City Manager

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Regular Council Meeting
Thursday, January 4, 2024**

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.

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from December 21, 2023, as submitted.

ADJUSTMENTS TO THE AGENDA

Flath moved, DuBord 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 – Scheduling of Public Hearings – 2024-25 Fiscal Year Budget Preparation – Citizen Participation – Administration.

Each year, the City Council holds public hearings to facilitate input from citizens for the upcoming fiscal year budget. Administration sought City Council approval to schedule the first of three (3) public hearings for January 18, 2024. Additionally, Administration sought City Council approval to schedule additional public hearings for February 15, 2024, and March 21, 2024.

NB-1 DuBord moved, Moore seconded, **CARRIED UNANIMOUSLY**, to schedule public hearings for January 18, 2024, February 15, 2024, and March 21, 2024, for citizen input on the 2024-25 Fiscal Year Budget.

NB-2 Approval – Garbage Cans – Public Works.

Public Works requested City Council approval to purchase 832 cans from Cascade Engineering in the amount of \$45,246.

NB-2 DuBord moved, Moore seconded, to approve to purchase 832 cans from Cascade Engineering in the amount of \$45,246.

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

Ayes: DuBord, Moore, Beauchamp, Flath, 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

- City Council Work Session January 9, 2024, at 3:00 p.m. in Council Chambers.
- City Council and Administration will be holding informational sessions throughout the year keeping the residents informed of the status of new or ongoing projects.

Hearing no further public comment, Flath moved, DuBord seconded, the Council adjourned at 7:05 p.m.

Respectfully submitted,

Phil DeMay
City Clerk

Approved: _____
Mark Ammel, Mayor

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Work Session Meeting
Tuesday, January 9, 2024**

Pursuit to a special meeting notice posted January 2, 2024, the meeting was called to order by the Honorable Mayor Mark Ammel at 3:00 p.m.

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.

ADJUSTMENTS TO THE AGENDA

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

CONFLICT OF INTEREST DECLARATION – None

NEW BUSINESS

NB-1 Discussion – 2024-25 Operating Budget Preparation.

Administration led a discussion concerning the upcoming 2024-25 operating budget and sought Council input on items the Council as a whole would like to see considered for inclusion in the budget. Additionally, the various departments updated the Council on budgetary opportunities and challenges for the upcoming year.

- City Manager McNeil provided a general review of the overall budget and expectations regarding Revenue Sharing, Tax Revenues, General Fund, and State Personal Property Tax.
- City Controller Melissa Becotte discussed the revenue sharing picture; discussed increase workload for staff with pension plan. No major equipment purchases. The rest of the Controller's budget will be "normal" for this year's budget. Also discussed City Hall Maintenance Department budget requests.
- City Recreation Director Kimberly Peterson reviewed the Recreation budget, projects, equipment, building maintenance, employees, and grant updates.
- Water/Wastewater Superintendent Jeff Lampi updated Council on the current and future status of his departments. Lampi discussed construction projects, water/wastewater projects, maintenance costs, staffing update, equipment purchases, grant opportunities, applications for loans, future problems, and discussed capital improvement. Mr. Lampi gave a handout and breakdown of

City Council Minutes
January 9, 2024 – cont.

proposed expenditures. City Manager McNeil gave an overview of street project proposals.

- City Library Director Carolyn Stacey discussed budget items including penal fines, staffing, technology needs, outreach program, operating costs, book mobile, and grants.
- Downtown Development Authority Director Craig Woerpel discussed downtown Escanaba, marketing and promotions, business entrepreneurship, maintenance of marketplace, vandalism, and events update.
- City Treasurer/HR Administrator Heather Calouette discussed staff update, improvements to payment drop off, BSA software update.
- Public Safety Director John Gudwer discussed budget items such as training, staffing, new body and dash cameras, building maintenance, attracting new officers to vacant positions, and continue the conversation of a new ladder truck.

DuBord moved to go into a recess.
Time being: 4:34 p.m.

Flath moved to go back into session.
Time being 4:43 p.m.

- Electric Superintendent Gerald Pirkola discussed capital and operating budget, projects, power contract and rates, compacity, renewable Clean Energy Bill update, staffing, building projects, equipment purchases, AMI installation, cold storage garage, pole testing, and tree trimming.
- Planning and Zoning Administrator Tyler Anthony discussed zoning updates, possible fee increases, office equipment purchases, grant opportunities, and budget update.
- Public Works Superintendent Kent DuBord discussed equipment purchase, staffing update, building maintenance, fuel station replacement or upgrade, grants, Salt Dome update, sidewalks, woodchipper, garbage trucks, and security cameras.
- City Clerk/IT Administrator Phil DeMay discussed the upcoming elections. Proposed a pay increase for Election Inspectors and Chairs, business equipment purchases, training, and staffing.
- IT Administrator DeMay discussed the current technology projects and discussed updating the City Meraki firewall license. Discussed security camera project in the future.

City Council Minutes
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- City Assessor James McNeil discussed the preparation of the 2024 tax base; it is expected to remain stable. There are no major additions or subtractions to the Assessor or Board of Review budgets;
- Harbor Master Shane Sanville was not present.

GENERAL PUBLIC COMMENT – None

ANNOUNCEMENTS – None

Hearing no further public comment, Flath moved, DuBord seconded, the Council adjourned at 5:21 p.m.

Respectfully submitted,

Phil DeMay
City Clerk

Approved: _____
Mark Ammel, Mayor

Agenda Item: NB-1
Date: 01-18-2024

City Council Agenda Item Request

Date: 12/4/2023

Name: Melissa Becotte

Department: City Controller

Item: Audit Presentation

Meeting date requested: 1/18/2024

Explanation for request:

Paul Matz of the audit firm Rehmann will give a presentation of the 6/30/2023 audit results.

Agenda Item: NB-2
Date: 01-18-2024

City Council Agenda Item Request

Date: 1/10/2024

Name: Jeff Lampi

Department: Water Department

Item: TMF (Technical, Managerial, and Financial) - LSLR Grant Application

Meeting date requested: 1/18/2024

Explanation for request:

Administration is requesting Council's approval to hire and retain the services of C2AE of Escanaba, MI to assist the City of Escanaba Water Department in preparing an application for the TMF - LSLR Grant Funding to verify water service line materials in an amount not to exceed \$1,500.00.

This application will not hold the City liable for any further financial obligation.

Money is available and budgeted for professional services.



January 9, 2024

Mr. Jeff Lampi
Utilities Superintendent
City of Escanaba
P.O. Box 948
Escanaba, MI 49829

Dear Mr. Lampi,

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) recently announced over \$50M in TMF-LSLR grant funding for municipalities to verify water service line materials where they are expected to be lead. Each community can request up to \$600,000 in grant funding, without a local match, to develop planning documentation for the investigation and related outreach/education efforts. Grant activities must be completed by December 31, 2026. The overall intent of the grant program is for communities to become better prepared to pursue Bipartisan Infrastructure Law (BIL) funding through EGLE for the replacement of lead service lines.

If lead services are found and your community desires to pursue BIL Lead Service Line Removal (BIL-LSLR) funding, the program is 51% loan and 49% principal forgiveness for overburdened communities. The FY 2024 BIL-LSLR program dollars available are over \$109 million. Additional program dollars will be available in FY 2025 and FY 2026 as well.

C2AE has extensive experience and can assist your community through the grant application process and completing the required planning effort. We are currently performing similar planning work in eight (8) municipalities across Michigan.

TMF-LSLR Grant applications will be available starting on January 1, 2024, and must be submitted by January 31, 2024. We are offering our services, for a lump sum fee of \$1,500.00, to assist your community in submitting a grant application. Awards will be made in March 2024. Priority will be given to communities that have not received Drinking Water Asset Management (DWAM) grant or EGLE Drinking Water State Revolving (DWSRF) funding. Please give us a call to learn more.

Sincerely,

C2AE

Kelly Heidbrier

Project Manager

Darren J. Pionk, PE

Client Relations Manager

Authorization to Proceed:

City of Escanaba

Date

New Grant Program for LSLR TMF

EGLE-DWGrants <EGLE-DWGrants@michigan.gov>

Thu 11/2/2023 3:30 PM

 1 attachments (138 KB)

TMF LSLR flyer.pdf;

Hello,

EGLE is excited to announce the launch of the Community Technical, Managerial, and Financial Support for Lead Service Line Replacement (TMF LSLR) grant program. The Michigan Legislature appropriated \$48 million for this program, with the primary goal of funding the physical verification of lead service lines and assisting communities in utilizing the Bipartisan Infrastructure Law (BIL) Drinking Water State Revolving Fund ([DWSRF](#)) funding for lead service line replacements. This grant aims to support communities in their efforts to replace lead service lines and ensure safe drinking water for all residents.

Eligible activities under this grant program include the physical verification of service lines at properties where lead is suspected but not confirmed, or where the service line material is unknown but likely contains lead. Associated project planning document development related to lead line replacements, and outreach/education in support of lead service line replacement activities that result from the verifications done as part of this grant are also eligible.

All publicly owned Type I community drinking water systems are eligible for this funding. Priority will be given to applicants who have not previously received funding for these activities through the Drinking Water Asset Management Grant or DWSRF program and have a low Median Annual Household Income (MAHI) as per the federal census.

EGLE will be hosting a webinar and Q&A session on November 29th at 2:00 pm. We encourage all interested communities and engineers to attend the webinar and take advantage of this opportunity to learn more about the grant program and how it can benefit your community. We look forward to your participation and the potential positive impact this grant program can have on addressing lead service line issues. Register here: [Webinar Registration - Zoom](#).

For more information about the TMF LSLR grant program, please visit our website: [Community Technical, Managerial, and Financial Support for Lead Service Line Replacement \(TMF LSLR\) \(michigan.gov\)](#).

Thank you,
Grants Unit
Water Infrastructure Funding and Financing Section
EGLE Finance Division



COMMUNITY TECHNICAL, MANAGERIAL, AND FINANCIAL (TMF) SUPPORT FOR LEAD LINE REPLACEMENT GRANT

In 2022, the Michigan state legislature appropriated \$48 million for a grant program for community technical, managerial, and financial support for lead line replacement. The goal of the TMF grant program is to fund physical verification of lead service lines and assist communities in utilizing the Bipartisan Infrastructure Law (BIL) DWSRF dollars for lead line replacement.

Eligible activities:

- Physical verification of service lines at properties where lead is suspected but not confirmed or where service line material is unknown but likely contains lead.
- If the above scope is included, proposals can also include:
 - Project planning document development related to lead line replacements
 - Outreach/education in support of lead service line replacement activities

All publicly owned community drinking water systems are eligible for this funding, with priority given to applicants that have not previously received funding for these activities and have low Median Annual Household Income (MAHI) per the federal census.

WEBINAR/
INFORMATIONAL
SESSION:
NOVEMBER 29,
2023, 2PM

APPLICATIONS
AVAILABLE ONLINE
DECEMBER 15,
2023

APPLICATIONS
ACCEPTED JANUARY
1 - 31, 2024

SEE WEBSITE FOR
MORE
INFORMATION

CONTACT

Water Infrastructure Funding &
Financing Section
Grants Unit
EGLE-DWGrants@Michigan.gov

[https://www.michigan.gov/egle/
regulatory-assistance/grants-
and-financing/community-tmf-
support](https://www.michigan.gov/egle/regulatory-assistance/grants-and-financing/community-tmf-support)

EGLE

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

Agenda Item: NB-3
Date: 10/18/24

City Council Agenda Item Request

Date: January 11, 2024

Name: Gerald Pirkola

Department: Electric Department

Item: Approval - Energy Optimization Program

Meeting date requested: January 18, 2024

Explanation for request:

Administration is seeking approval for the 2024 Energy Optimization Program in the amount of \$150,000. This is a budgeted item. The Electrical Advisory Committee supports and recommends this program.

Agenda Item: _____

Date: _____

City Council Agenda Item Request

Date:

Name:

Department:

Item:

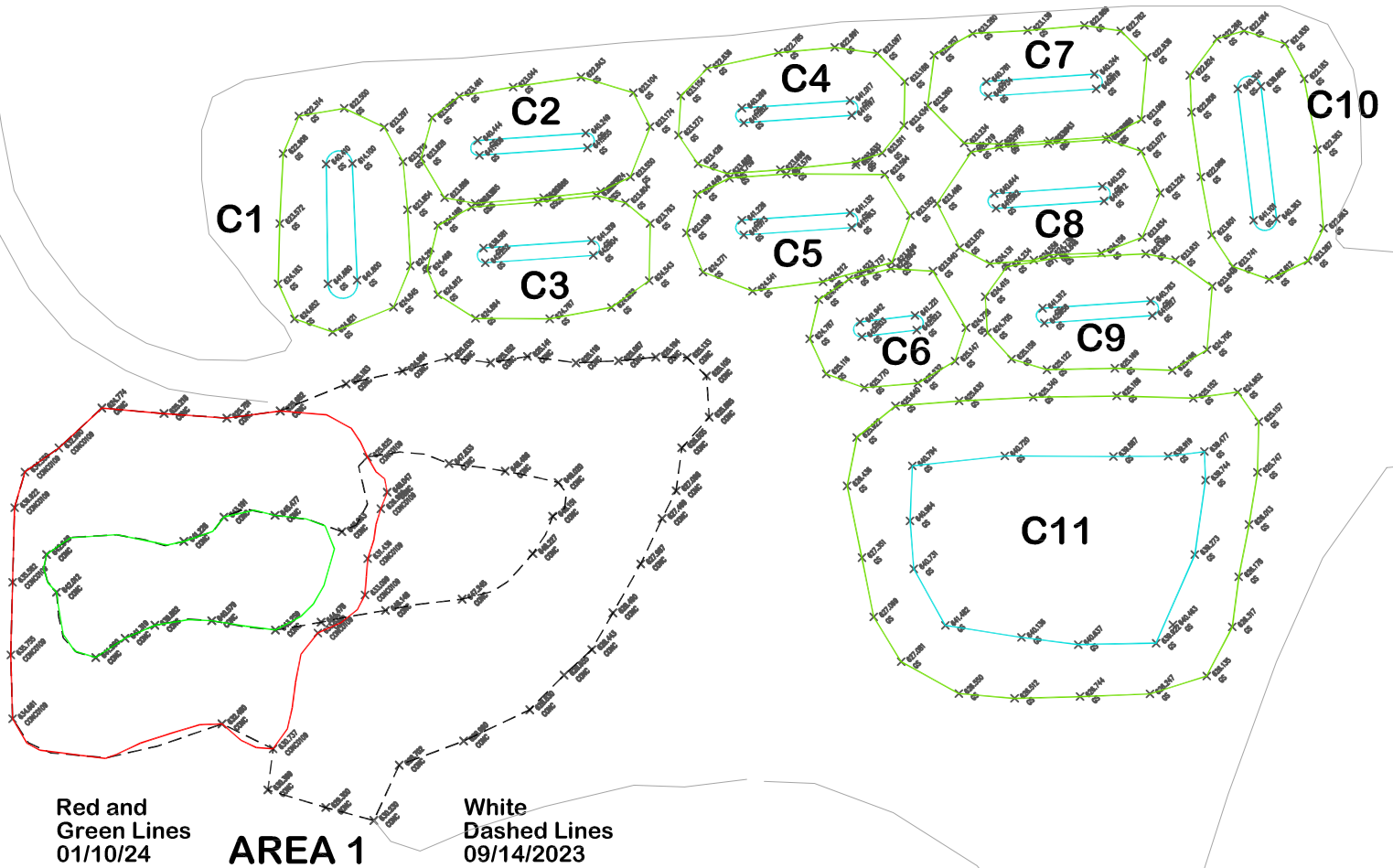
Meeting date requested:

Explanation for request:

Crushed Concrete Pile Quantities (as of 01/12/24)

Pile	a (Sft)	b (Sft)	c (Area) (Sft)	h (Lft)	V (Cft)	(Cyd)	3500 #/Cyd (Tons)
C1	3,148.20	506.80	1,827.50	17.50	15,990.63	592.25	1,036.43
C2	2,886.18	230.54	1,558.36	17.10	13,323.96	493.48	863.59
C3	2,922.06	227.62	1,574.84	19.85	15,630.27	578.90	1,013.07
C4	2,986.58	227.62	1,607.10	17.34	13,933.55	516.06	903.10
C5	2,707.31	227.62	1,467.46	17.08	12,532.15	464.15	812.27
C6	1,839.66	128.05	983.85	16.82	8,274.20	306.45	536.29
C7	2,817.31	227.62	1,522.46	17.68	13,458.57	498.47	872.31
C8	2,766.84	227.62	1,497.23	17.31	12,958.52	479.95	839.90
C9	2,929.92	227.62	1,578.77	16.99	13,411.66	496.73	869.27
C10	3,267.36	448.32	1,857.84	17.42	16,181.80	599.33	1,048.82
C11	13,981.30	6,304.91	10,143.10	17.55	89,005.72	3,296.51	5,768.89

TOTAL: 8,322.26 14,563.95



Agenda Item: NB-5
Date: 10/18/2024

City Council Agenda Item Request

Date: 1/11/2024

Name: James McNeil

Department: Manager

Item: MERS Withdrawal and Asset Transfer Agreement

Meeting date requested: 1/18/2024

Explanation for request:

Administration is requesting City Council approval of the MERS Defined Benefit Plan Withdrawal and Asset Transfer Agreement.

MERS DEFINED BENEFIT PLAN
WITHDRAWAL AND ASSET TRANSFER AGREEMENT

This MERS Defined Benefit Withdrawal and Asset Transfer Agreement (“Agreement”) is entered into by and between the Municipal Employees’ Retirement System of Michigan (“MERS”), a statutory public corporation with offices located at 1134 Municipal Way, Lansing, Michigan, 48917 and the City of Escanaba (“Municipality”), with offices located at 410 Ludington St., P.O. Box 948, Escanaba, Michigan, 49829, (each a “Party,” and collectively, the “Parties”) as of the last date of execution below.

The purpose of this Agreement is to provide for the termination of Municipality’s participation in MERS’ Internal Revenue Code (“IRC”) section 401(a) qualified governmental defined benefit plan (“DB Plan”) and to transfer all assets held in trust by MERS to a non-MERS 401(a) qualified pension plan, and to transfer all fiduciary duties and liabilities related to the DB Plan to Municipality.

RECITALS

Whereas, MERS is a governmental multiple employer pension plan and plan administrator, authorized by the Municipal Employees’ Retirement Act, Michigan PA 427 of 1984, as amended;

Whereas MERS’ services include administration of a defined benefit pension plan qualified under section 401(a) of the IRC, the terms of which are governed by the MERS Plan Document, as amended;

Whereas, Municipality joined the DB Plan by resolution of its City Council, dated July 1, 1946, and;

Whereas, MERS Plan Document Section 11 and the MERS Termination Policy and Procedure as adopted March 15, 2018 and amended through February 17, 2022 (the “Policy”) provide procedures by which a participating municipality or court (“participating municipality”) may terminate participation in the DB Plan and transfer the participating municipality’s reserve assets and liabilities under the DB Plan to a non-MERS pension plan qualified under IRC section 401(a);

Whereas, in satisfaction of the requirements of the MERS Plan Document and the Policy, Municipality and MERS are required to enter into a defined benefit withdrawal and asset transfer agreement to effectuate Municipality’s termination of participation and the transfer of funds and liabilities to a non-MERS pension plan qualified under IRC section 401(a);

Whereas, upon the entry into a defined benefit withdrawal and asset transfer agreement, all assets held in Municipality’s reserve(s) with MERS to fund the DB Plan and all liabilities attributable to the Municipality’s participation in the DB Plan, together with the fiduciary and other legal duties attendant to the DB Plan, shall be transferred to the successor non-MERS pension plan qualified under IRC section 401(a) identified by Municipality;

Whereas, Municipality has substantively complied with and fulfilled all of the requirements of Section 11 of the Plan Document (and the Policy incorporated herein) and has timely delivered a copy of the resolution (reflecting a two-thirds vote of that governing body of Municipality that is empowered to take such action (“Governing Body”)) terminating participation in MERS’ DB Plan and adopting the City of Escanaba Defined Benefit Retirement Plan, (“Non-MERS Successor Plan”), a non-MERS pension plan qualified under IRC Section 401(a) (“Resolution”) (a copy of which Resolution is attached hereto as Exhibit A), the terms of which Resolution are incorporated herein by reference; and

Whereas, the Governing Body of Municipality (on behalf of Municipality) and MERS now desire to enter into this Agreement to effectuate the termination of Municipality’s participation in the DB Plan and to transfer the assets and liabilities to the Non-MERS Successor Plan;

Now, therefore, in consideration of the above, MERS and Municipality agree as follows:

1. Municipality represents and warrants that it has complied with and completed or met each of the requirements of Section 11 of the Plan Document and Section I, Phase One of the Policy on October 19, 2023, which date is defined as the Termination Date.
2. Municipality and MERS represent, warrant and agree that each Party has complied with and completed or met each of the requirements of Section I, Phase Two of the Policy prior to the last date of execution of this Agreement.
3. Except as provided in Section 4 below, on February 1, 2024 (the “Effective Date”):
 - a. All Adoption Agreements, Participation Agreements and Administrative Services Agreements between MERS and Municipality regarding the DB Plan, and all associated mutual obligations, will be terminated;
 - b. Municipality’s participation in the DB Plan will be terminated;
 - c. All active members as of the Effective Date will be 100% vested in their accrued financial benefits as of the Termination Date, if required by law, and the service credit attributable to each deferred vested former member and active member (“Members”) will be frozen as of the Termination Date;
 - d. After MERS processes the February benefit payments to Retirees as provided in Section 4 below, MERS will pay no further benefits and have no further liability to pay benefits to Members, or retirees and beneficiaries (“Retirees”).
 - e. MERS will transfer the Transfer Amount (as defined in the next sentence), via wire transfer to the Non-MERS Successor Plan, and the Non-MERS Successor Plan will acknowledge receipt of the Transfer Amount in writing within one (1) business day. The Transfer Amount is equal to: (i) the fair market value of all assets attributable to the Municipality’s DB Plan as of October 31, 2023 (the “Valuation Date”) as set forth in the termination valuation conducted by MERS; minus (ii) the total amount required to make the November, December, January, and February benefit payments to Retirees as provided in Section 4 below;
 - f. MERS will no longer have any role, obligation or liability as an investment fiduciary under the Public Employees Retirement Security Investment Act, PA 314 of 1965 (“PERSIA”),

or a fiduciary, plan administrator and trustee under any common law, applicable law or regulation, and the Municipality will assume all such roles, obligations or liabilities as an investment fiduciary under PERSIA, a fiduciary, plan administrator and trustee under any common law, applicable law or regulation.

- g. Municipality will assume liability for all assets transferred, all liabilities for all benefits (except for the February benefit payments as provided in Section 4 below), and all responsibilities associated with the roles of investment fiduciary, fiduciary, plan administrator and trustee as set forth in PERSIA and under all other applicable state and federal common and statutory law and regulations, none of which roles, responsibilities or liabilities shall then remain with MERS for any purpose whatsoever.
 - h. Investment income attributable to the Transfer Amount but not applied as of the Effective Date (the "Investment Income") will be transferred to the Non-MERS Successor Plan as soon as is practicable. The Investment Income will be calculated by multiplying the average daily balance in the City's MERS DB Plan Account from the Valuation Date through the Effective Date by the earnings rate for the MERS DB Plan from the Valuation Date through the Effective Date. MERS will provide reasonable documentation showing how the Investment Income was calculated.
- 4. Notwithstanding anything in this Agreement to the contrary, MERS will be responsible for processing the February benefit payments to Retirees.
 - 5. On and after the transfer of the Investment Income as provided in Section 3.h and the processing of the February benefit payments as provided in Section 4, no Indemnified Person as defined in paragraph 9 below shall have any liability whatsoever with respect to any applicable portion of the Transfer Amount, the Liability Amount; or any distribution or payment of benefits to or on behalf of any Participant or Retiree.
 - 6. MERS affirms that it has or will provide Municipality and the Non-MERS Successor Plan with all employee census and benefit provision data related to the DB Plan requested by Municipality and the Non-MERS Successor Plan reasonably needed to properly administer the Members' and Retirees' pension benefits, and that it will maintain such information and data for a period of one (1) year after the Effective Date.
 - 7. Municipality acknowledges that, pursuant to Article 9, Section 24 of the 1963 Michigan Constitution, accrued financial benefits of the Participants and Retirees shall not be impaired or diminished, and this prohibition extends to any impairment or diminution by reason of Municipality's termination of participation in the DB Plan or the transfer of assets the Non-MERS Successor Plan.
 - 8. Municipality understands and acknowledges that, in making its decision to enter into this Agreement, MERS has reasonably relied upon the following additional representations of Municipality that:
 - a. Municipality's Non-MERS Successor Plan is or is intended to be well-funded;
 - b. The actuarial assumptions, if any, to be used in funding the Non-MERS Successor Plan are expected and intended to be reasonable; and

- c. The Non-MERS Successor Plan will be administered by vendor(s) experienced in the administration of qualified plans; and
 - d. The Non-MERS Successor Plan is qualified under Internal Revenue Code Section 401(a) and Municipality intends to maintain such qualification.
9. MERS shall not be liable to Municipality or its officials, Members, Retirees, or to any other Party (or to any person or entity claiming through a Party) for lost profits or for special, incidental, consequential or exemplary damages arising out of or in any manner connected with this Agreement or the subject matter hereof, regardless of the form of action (whether in contract, tort, breach of warranty or otherwise), and regardless of whether or not such Party has been informed of, or otherwise might have anticipated, the possibility of such damages. MERS' liability will be limited to the greatest extent permitted by law. Municipality hereby agrees and acknowledges that any liability for any such claims shall become the sole and exclusive responsibility of Municipality.
10. Municipality shall indemnify and hold harmless MERS, its Board members, employees, agents, affiliates, successors, and assigns (collectively, the "Indemnified Persons") from and against any losses, claims, damages, liabilities, fines, penalties, costs of any type or description, whether awarded by a court or by settlement, attorneys' fees and court costs incurred by any Indemnified Person to which any of them may incur arising from the DB Plan, the subject matter of this Agreement, or any matter related to either (a "Claim Against MERS"), except to the extent that any such losses, claims, damages, liabilities, fines, penalties, or costs arose as a direct result of negligence or willful misconduct of MERS. Municipality will reimburse each Indemnified Person for their reasonable legal and other expenses (including the cost of any investigation and preparation) as they are incurred in connection with any action, proceeding or investigation arising out of or based upon the foregoing. The indemnity and reimbursement obligations of Municipality shall be in addition to any liability which Municipality may otherwise have (including, without limitation, liability for breach of any duty associated with Municipality's roles as investment fiduciary (under PERSIA), fiduciary, plan administrator or trustee (under all other applicable state or federal common or statutory laws or regulations)). MERS shall provide Municipality prompt written notice of any Claim Against MERS. No matter in which an Indemnified Person is Party arising out of the subject matter of this Agreement may be settled or otherwise consensually resolved without MERS' express written consent.
11. Municipality agrees that it may not cancel, terminate nor revoke this Agreement, and that this Agreement shall survive any termination, dissolution, privatization, bankruptcy or other change in structure or identity of Municipality and shall be binding upon Municipality's successors and assigns. All obligations under this Agreement and the representations, warranties, covenants, agreements and acknowledgments herein contained shall be deemed to be made by and binding upon each Municipality and its successors.
12. The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither Party has relied upon any representation, express or implied, not contained in the Agreement. All Parties hereto have had benefit of counsel and

have participated in the drafting of this Agreement and no term herein shall be construed against any Party as drafter. All Parties hereto agree that they have full right, power, authority and capacity to enter into and execute the Agreement and do so of their own volition.

13. The Parties agree to cooperate fully and execute any and all documents and to take all additional actions necessary to give full force and effect to the terms and intent of this Agreement.
14. This Agreement and any and all disputes arising directly or indirectly from the Agreement shall be governed by the laws of the State of Michigan, without regard to its conflict of law provisions. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Circuit Court of the State of Michigan for Delta County for all suits, actions or proceedings directly or indirectly arising out of or relating to the Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum.
15. The rights and remedies of the Parties are cumulative and not alternative. No waiver of any rights is to be charged against any Party unless such waiver is in writing signed by an authorized representative of the Party so charged. Neither the failure of nor any delay by any Party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
16. No modification of or amendment to the Agreement will be effective unless in writing, signed by authorized representatives of both Parties.
17. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effectuates the Parties' intent.
18. Neither Party may assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of the other Party, which consent such Party may grant or withhold in its sole and absolute discretion. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.
19. All provisions of this Agreement survive the discharge of the duties and obligations set forth above.
20. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and all of which, when taken together, shall constitute the complete executed agreement. The signature of any Party transmitted by facsimile, electronic mail or other electronic means shall have the same effect as an original signature.

Wherefore, by the authorized signatures set out below, this Agreement is effective as of the last date of such signature.

For Municipality:

Signature
Printed Name: _____
Its: _____
Date: _____

For MERS:

Signature
Printed Name: _____
Its: _____
Date: _____

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Agenda Item: NB-6
Date: 10/18/2024

City Council Agenda Item Request

Date: 1/12/2024

Name: James McNeil

Department: Manager

Item: MDOT Performance Resolution for Municipalities

Meeting date requested: 1/18/2024

Explanation for request:

Administration is requesting City Council approval of a resolution for the annual permit for work in the State Highway Right of Way.

PERFORMANCE RESOLUTION FOR MUNICIPALITIES

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

RESOLVED WHEREAS, the _____
(County, City, Village, Township, etc.)

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

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

1. Each party to this *Resolution* shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this *Resolution*, as provided by law. This *Resolution* is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. If any of the work performed for the MUNICIPALITY is performed by a contractor, the MUNICIPALITY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the MUNICIPALITY Failure of the MUNICIPALITY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.
3. Any work performed for the MUNICIPALITY by a contractor or subcontractor will be solely as a contractor for the MUNICIPALITY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the MUNICIPALITY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the MUNICIPALITY.
4. The MUNICIPALITY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.
5. The MUNICIPALITY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the MUNICIPALITY'S facilities according to a PERMIT issued by the DEPARTMENT.

6. With respect to any activities authorized by a PERMIT, when the MUNICIPALITY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.
7. The incorporation by the DEPARTMENT of this *Resolution* as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
8. This *Resolution* shall continue in force from this date until cancelled by the MUNICIPALITY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the MUNICIPALITY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

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

Title and/or Name:

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

the _____
(Name of Board, etc.)
of the _____ of _____
(Name of MUNICIPALITY) (County)
at a _____ meeting held on the _____ day
of _____ A.D. _____.

Signed

Title

Print Signed Name