



## CITY COUNCIL MEETING AGENDA

April 4, 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, April 4, 2024, at 7:00 p.m.**

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – March 21, 2024

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS – None

UNFINISHED BUSINESS – None

NEW BUSINESS

#### **1. Presentation – 2023 Planning Commission Annual Report – Planning & Zoning.**

**Explanation:** During a regular meeting of the Planning Commission on March 14, 2024, a motion was made to approve the Planning Commission Annual Report and Work Plan as presented before them and submit to City Council for review in accordance with the Michigan Planning Enabling Act, PA 33 of 2008, Section 125.3819.

#### **2. Approval – Annual Chemical Bids – Water/Wastewater.**

**Explanation:** Administration is seeking City Council consent to accept the following annual chemical bids:

- a. Hawkins, Inc., Roseville, MN to furnish approximately 35,000 pounds of Hydro-Fluosilicic acid for use in drinking water treatment of \$46.90 / hundred in totes.
- b. Aquachem of America, Inc., Appleton, WI to furnish approximately 100 net tons of Aluminum Sulfate liquid in the amount of \$450.00 per dry ton.
- c. Thatcher Co., Salt Lake City, Utah to furnish approximately 95 tons of Dense Soda Ash in 50-pound bags for use in drinking water treatment in the amount of \$26.49 / cwt 50-lb bags.
- d. Kemira Water Solutions, Lawrence, KS to furnish approximately 50 tons of dry weight Ferric Chloride in the amount of \$1,394.00 / dry ton.
- e. Hawkins, Inc., Roseville, MN to furnish approximately 10 tons of liquid Chlorine in amount of \$165.00 per cwt in 150-pound cylinders.

#### **3. Approval – Live Dive WW Outfall Inspection – Wastewater.**

**Explanation:** Administration is requesting City Council approval to retain Underwater Construction Corporation of Racine, WI, for underwater inspection services of the wastewater outfall in an amount not to exceed \$7,000.00. Money is available and budgeted for this type of activity with the current FY.

Agenda – April 4, 2024

**4. Approval – Additional Engineering Required for Clean Water State Revolving Funds (CWSRF) – Wastewater.**

**Explanation:** Administration is requesting City Council approval to compensate C2AE from Escanaba, MI, for additional engineering services with regard to the work within the expended scope of the Clean Water State Revolving Funds (CWSRF- APRA Grant) in an amount of \$251,505.00.

**5. Approval – Engineering for the MDOT US-2 Reconstruction Project – Water.**

**Explanation:** Administration is requesting City Council approval to retain C2AE from Escanaba, MI, for engineering services for the 30% base plans with regard to the MDOT US-2 Reconstruction Project in an amount not to exceed \$19,250.00. Money for this type of activity is budgeted and available within the current Water Department's fiscal year.

APPOINTMENTS

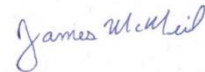
BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

**Respectfully Submitted,**



**James R. McNeil  
City Manager**

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, March 21, 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 March 7, 2024, as submitted.

**ADJUSTMENTS TO THE AGENDA**

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

**CONFLICT OF INTEREST DECLARATION**

Council Member Beauchamp has declared New Business item number 10 a conflict of interest due to owning property within the agreement.

**AWARD PRESENTATIONS(S)**

Officer Lifesaving Awards were presented to Austin Young, Mitch Peterson, and Dalton Deneau.

**BRIEF PUBLIC COMMENT** – None

**PUBLIC HEARINGS**

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

A public hearing was conducted to facilitate input from citizens for the City's next fiscal year budget. This was the third of five (5) scheduled public hearings.

This being a public hearing, Mayor Ammel asked for public comment.

Hearing no public comment, Mayor Ammel then closed the public hearing.

**UNFINISHED BUSINESS** – None

**NEW BUSINESS**

**NB-1 Presentation – New Planet Walk on Ludington Street – Manager.**

Dan Young with the Delta Astronomical Society gave a brief presentation on the New Planet Walk on Ludington Street.

**NB-1** Beauchamp moved, DuBord seconded, to provide Delta Astronomical Society with a donation of \$1,500 towards their fundraising.

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

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

Nays: None

**MOTION CARRIED.**

**NB-2 Approval – Escanaba Public Safety Department Building Generator Bid - EPSD.**

Administration requested City Council approval to purchase an 80KW Generac generator from Master Electric of Escanaba, MI, in the amount of \$120,705.00.

**NB-2** DuBord moved, Flath seconded, to approve to purchase an 80KW Generac generator from Master Electric of Escanaba, MI, in the amount of \$125,705.00 contingent on purchasing an appropriate warranty.

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

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

Nays: None

**MOTION CARRIED.**

**NB-3 Approval - Street Closure Requests for Various Fundraising Events - Manager.**

Cat-Man-Do's, 1223 Ludington Street is requesting the City Council approve the closure of the 1200 Block of Ludington Street for (Classic Car & Bike Nights May 8th (9th), June 12th (13th), July 10th (11th), August 14th (15th), and the closure of the

100 block of South 13th Street from Ludington Street to 1st Avenue South for the other Fundraisers (Car Show July 1st, Wheelin' Sportsmen August 24th, and Law Enforcement Torch Run September 11th (12th).

**NB-3** Moore moved, Beauchamp seconded, **CARRIED UNANIMOUSLY**, to approve a request from Cat-Man-Do's, 1223 Ludington Street for the closure of the 1200 Block of Ludington Street for (Classic Car & Bike Nights May 8th (9th), June 12th (13th), July 10th (11th), August 14th (15th), and the closure of the 100 block of South 13th Street from Ludington Street to 1st Avenue South for the other Fundraisers (Car Show July 1st, Wheelin' Sportsmen August 24th, and Law Enforcement Torch Run September 11th (12th).

**NB-4 Approval – State Infrastructure Bank (SIB) Loan Application - Manager.**

City administration requested City Council approval to apply for a 20-year State Infrastructure Bank (SIB) loan in an amount of \$2,000,000. This funding is necessary and will be used in coordination with the CWSRF project for full-width reconstruction and storm sewer construction on Ludington Street.

**NB-4** Beauchamp moved, Moore seconded, to approve to apply for a 20-year State Infrastructure Bank (SIB) loan in an amount of \$2,000,000, which is necessary and will be used in coordination with the CWSRF project for full-width reconstruction and storm sewer construction on Ludington Street.

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

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

Nays: None

**MOTION CARRIED.**

**NB-5 Approval – State Infrastructure Bank (SIB) Loan Application – Manager.**

City administration requested City Council approval to apply for a 15-year State Infrastructure Bank (SIB) loan in an amount of \$2,000,000. This funding is necessary and will be used in coordination with the DWSRF projects for full-width reconstruction following water main replacement and a portion of the LSL replacement areas.

**NB-5** DuBord moved, Flath seconded, to approve to apply for a 15-year State Infrastructure Bank (SIB) loan in an amount of \$2,000,000, which is necessary and will be used in coordination with the DWSRF projects for full-width reconstruction following water main replacement and a portion of the LSL replacement areas.

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

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

Nays: None

**MOTION CARRIED.**

**NB-6 Approval – Sanitation Services for the 2024-2025 Season – Recreation.**

Two bids were mailed on January 22, 2024, with one bid being received from Stenberg Brothers of Bark River, MI. Bids were opened on March 4, 2024. Administration and the Recreation Advisory Board recommended approval of this bid.

**NB-6** Moore moved, Beauchamp seconded, to award Stenberg Brother’s, Inc. of Bark River, Michigan, for sanitation services/portable restrooms for City of Escanaba Recreation and Parks Facilities for the 2024-2025 seasons.

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

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

**MOTION CARRIED.**

**NB-7 Approval – Ludington Park Food/Drink Concessions for the 2024 Season – Recreation.**

Twenty-one bids were mailed on January 22, 2024, with one bid being received from Sticky Fingers of Gladstone, MI. Bids were opened on March 4, 2024. Administration and the Recreation Advisory Board recommended approval of this bid.

**NB-7** Flath moved, DuBord seconded, to award the concession area in Ludington Park to Sticky Fingers of Gladstone, Michigan.

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

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

**MOTION CARRIED.**

**NB-8 Approval – MDNRTF Grant Application Submittal and Resolution 24-02 – Recreation.**

The Recreation Department sought City Council approval and authorization to apply for a Michigan Department of Natural Resources Trust Fund Grant. The City of Escanaba sought \$400,000 in Trust Fund monies to construct eight dedicated pickleball courts at Royce Park. There will be a \$100,000 matching fund commitment (25% required) from the City of Escanaba.

**NB-8 (a)** DuBord moved to approve and authorize to apply for a Michigan Department

of Natural Resources Trust Fund Grant to construct 6 dedicated pickleball courts, update basketball courts, and playground equipment at Royce Park with a \$140,000 matching fund commitment (25% required) from the City of Escanaba.

***Motion died on the floor due to a lack of a second.***

**NB-8 (b)** Moore moved, Flath seconded, to approve and authorize to apply for a Michigan Department of Natural Resources Trust Fund Grant to construct eight dedicated pickleball courts at Royce Park with a \$140,000 matching fund commitment (25% required) from the City of Escanaba.

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

Ayes: Moore, Flath, Beauchamp

Nays: DuBord, Mayor Ammel

**MOTION CARRIED.**

**NB-9 Approval – DWAM Water Service Material Investigation – Water Treatment Plant.**

Administration requested City Council approval to hire Monchilov Sewer Services, LLC of Fairgrove, Michigan, with regard to the DWAM Grant to investigate existing water services throughout the City in an amount not to exceed \$321,077.00.

**NB-9** Moore moved, Flath seconded, to approve to hire Monchilov Sewer Services, LLC of Fairgrove, Michigan, with regard to the DWAM Grant to investigate existing water services throughout the City in an amount not to exceed \$321,077.00.

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

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

Nays: None

**MOTION CARRIED.**

**NB-10 Approval – Willow Creek – South 32nd Street Property Agreement – Manager.**

Administration sought City Council approval to sell unused property to all property owners located on the west side of South 32nd Street, subject to terms outlined in the attached memorandum.

**NB-10** DuBord moved, Flath seconded, to approve to sell unused property to all property owners located on the west side of South 32nd Street, subject to terms outlined in the attached memorandum.

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

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

**MOTION CARRIED.**

**APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES**

*Council made the following appointment:*

Howard Smale appointed to the Housing Commission, expiring June 1, 2026.

**BOARD, COMMISSION, AND COMMITTEE REPORTS**

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

**GENERAL PUBLIC COMMENT**

- Karen Flynn – discussed street construction.

**ANNOUNCEMENTS**

- Snow fall tomorrow should not be significant enough to reinforce winter parking restrictions as long as we do not get more than predicted.
- Happy Easter!

Hearing no further public comment, Flath moved, DuBord seconded, the Council adjourned at 8:18 p.m.

Respectfully submitted,

Phil DeMay  
City Clerk

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



Agenda Item: NB-1  
Date: 04-04-2024

## City Council Agenda Item Request

Date: 3-22-2024

Name: Tyler Anthony

Department: Planning & Zoning

Item: Planning Commission 2023 Annual Report

Meeting date requested: 4-04-2024

Explanation for request:

At their regular meeting on March 14, the Planning Commission adopted their 2023 annual report, and resolved to transmit and present it to the City Council.

Per the Michigan Planning Enabling Act: "A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development."

Its statutory necessity aside, this report serves many useful purposes. Among these points, the report seeks to 1) help share information between staff, boards, the Commission, and the City Council; 2) allow for anticipation of upcoming issues and priorities; and 3) summarize the vast body of work that the Commission undertakes each year.

Patrick Connor, Chair of the Planning Commission, will formally present the report.



# **Planning Commission 2023 Annual Report**

Escanaba Planning Commission  
March 14, 2024

## Introduction

Michigan's planning commissions play a crucial role in guiding community development by evaluating proposals, recommending zoning regulations, and actively engaging the public in decision-making processes. This advisory body ensures that proposed developments align with established ordinances and comprehensive plans, emphasizing sustainable growth strategies. Committed to fostering an inclusive approach, planning commissions seek input from residents through public hearings, ultimately striving to balance the evolving needs of the community with the preservation of its distinctive character. In essence, their work contributes to the creation of vibrant, resilient, and well-planned communities across the state.

As stewards of Escanaba's growth and heritage, our Planning Commission guides development here at the heart of Michigan's Upper Peninsula. Their main responsibilities include:

1. **Reviewing and Approving Development Plans:** The Commission reviews proposed developments, zoning changes, subdivisions, and site plans to ensure they align with city ordinances and comprehensive plans.
2. **Zoning Regulations:** They recommend changes to the zoning ordinance or map to the City Council, ensuring that land use is in line with the city's vision.
3. **Public Engagement:** The Commission often conducts public hearings to gather community input on proposed developments or zoning changes.
4. **Creating and Maintaining Community Plans:** They lead the way in crafting and promoting the use of various plans for the community's use – most notably among them, the Master Plan, which guides Escanaba's long-term development.

To these esteemed Commission members: Your dedication to shaping Escanaba's future is truly commendable. We, your neighbors, extend our appreciation for your hard work and steadfast commitment in guiding our city forward through the 21<sup>st</sup> century.

## This Report

Per the *Michigan Planning Enabling Act*: “A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.”<sup>1</sup> Its statutory necessity aside, this report serves many useful purposes. Among these points, the following are the most important:

- Help share information between staff, boards, the Commission, and the City Council.
- Allow for anticipation of upcoming issues and priorities.
- Summarize the vast body of work that the Commission undertakes each year.

With the Commission’s roles and responsibilities established, and the purpose of this report made clear, let us now move into the details...

## Membership and Meetings

Our Commission’s members are appointed by the City Council per the “City of Escanaba Planning Commission Ordinance”.<sup>2</sup> These dedicated individuals work to prioritize the City’s overall wellbeing. Each member is intended to represent distinct community segments, ensuring diverse perspectives in decision-making. This commitment helps meet the goal of fostering inclusive representation for a thorough and thoughtful planning process.

Membership changed quite a lot over the year. Five out of the seven members resigned before their terms of office expired, and new members were appointed to fill those seats. Below is a table of this year’s Commission members – current and former – which includes their terms.

---

<sup>1</sup> State of Michigan, *Michigan Planning Enabling Act*, “Bylaws; adoption; public record requirements; annual report by planning commission” MCL 125.3819.

<sup>2</sup> City of Escanaba, Michigan, *City Code of Ordinances*, “City of Escanaba Planning Commission Ordinance” sec. 21-16 et seq.

Seat	Member's Name	Term Expiration Date
1	David Mason	[Resigned 8-16-2023]
	Kasja Nelson	6-1-2024
2	James Hellermann	6-1-2024
3	Kelli VanGinhoven	[Resigned 6-7-2023]
	Christiana Reynolds	6-1-2026
4	Roy Webber	6-1-2025
5	Nevin Naser	[Resigned 4-25-2023]
	Patrick Connor	6-1-2025
6	Dominic Bennetti	[Resigned 2-6-2023]
	Michael Harris	6-1-2024
7	Mark Hannemann	[Resigned 2-3-2023]
	Mark Sadowski	6-1-2026

### Meetings and Public Engagement

The Commission met 13 times over the year: 12 regular meetings, and one special meeting. This meets the requirements of the Michigan Planning Enabling Act.<sup>3</sup> Total attendance by private citizens peaked at 123. Comments on agenda items came to 16, including written ones. 14 general comments were also received. Nearly all this public engagement came during the first three meetings of the year: January 12, February 9, and March 9. It was at those meetings that most of the marihuana retailers had their public hearings (see the “Development Reviews” section). The Commission also dug into discussion on the first two amendments recommended to the City Council during this period. Because one of them was marihuana-related, it drew very strong attention.

---

<sup>3</sup> State of Michigan, *Michigan Planning Enabling Act*, “Meetings; frequency; time; place; special meeting; notice; compliance with open meetings act; availability of writings to public” MCL 125.3821.

## Master Plan Review

Each year, the Commission reviews progress on the Master Plan. This review stands as a measuring stick of our city's progress from year to year, indicating our development and evolution – physically, socially, and economically. During 2023, Escanaba witnessed massive advancements in infrastructure, community engagement, and sustainable growth initiatives, highlighting our unwavering dedication to crafting a thriving and unified city. Yet, amidst these achievements, a dynamic landscape of challenges and shifting needs has emerged, calling for a flexible reexamination of our objectives and strategies.

This review process serves as the bedrock of our adaptive approach, weaving together insights from the community, analytical assessments, and collaborative discussions to navigate the intricate pathways of urban development. Beyond acknowledging past triumphs, it paves the way for a forward-looking trajectory, assimilating groundbreaking solutions to address burgeoning concerns and dreams. The Master Plan review is our guiding compass, steering Escanaba toward a resilient, fair, and prosperous future.

### Progress on Goals

As is the Commission's regular practice, their staff reach out to all parties listed in the Master Plan's Implementation matrix. In this table, a lengthy list of "partners" is delegated various Master Plan objectives.<sup>4</sup> These partners are then asked to report back on what activities they have engaged in which further each of their associated objectives. Commission staff then compile these responses to gauge progress on the Master Plan's goals.

This year, only two of the partners responded: the Delta County Economic Development Alliance (DCEDA) – represented by Ed Legault, and the Delta County Historical Society

---

<sup>4</sup> City of Escanaba, Michigan, *2016 Master Plan*, 116

(DCHS) – represented by Karen Lindquist. Without cooperation from all parties, progress on the Master Plan is not well measured.

DCEDA reported generally good progress on the Master Plan. Out of nine total “actions” assigned to them, they successfully engaged in at least six. This amounts to very reasonable activity on Objective 1.6 of the Master Plan. They also found relative success on Objective 1.9, especially on Action E22 (Technical Assistance). However, general community progress on either of these objectives cannot be measured very well; without cooperation or reporting from all other parties with the same responsibilities as DCEDA, the full picture is missing.

Reporting from DCHS was also good. They share their responsibility for Actions H2([Historic] Asset Inventory) and H3 (Neighborhood Historic Overlay [District]) with three other partners. Despite having so many cooks in so small a kitchen, DCHS provided strong support to the Historic District Commission (HDC) in their work over the last few years. A reconnaissance-level survey of historic resources was completed, with a final report handed over to the HDC by the Michigan State Historic Preservation Office in April 2023. The DCHS Archives were of immeasurable help with this survey. And based on that survey, HDC is exploring options for the City to establish a new historic district under the Michigan Local Historic Districts Act.

In terms of the Commission’s progress, reporting isn’t quite as favorable. Out of 11 total objectives assigned to them, encompassing a staggering 35 individual actions, only Objective 4.1 saw any progress. During the year, the Commission contacted Smart Growth America (SGA), a land use-oriented nonprofit organization. High-level conversations have been taking place, and the Commission expects to partner with SGA’s Form-Based Code Institute. The goal is to develop and adopt a form-based zoning code, applicable to a limited portion of the City, thereby getting our foot in the door of zoning ordinance reform. As for other Master Plan actions, it is

hard to say how the Commission could work on many of them – without being a supporting party to the other partners, at least.

Again: without cooperation from all parties, Master Plan progress is not well measured.

### Annual Review Questions

Following a recommended best practice, the series of review questions below are considered each year. These questions help to find whether the Master Plan needs a refresh, an overhaul, or if any sections need to be added or removed.

Question	Yes/No	Comments
Have development patterns changed significantly since the plan was written and adopted?	No	Development patterns have not changed meaningfully since the plan's initial writing and adoption.
Does the adopted zoning ordinance align with the goals of the plan?	No	The zoning ordinance continues to lag far behind what was laid out in the plan. Some progress has been made over the last year, but it is well short of what needs to be done.
Have there been any major changes, such as utility lines, major road improvements, large development approvals, etc.?	Yes	Significant expansions and repairs/replacements were undertaken with the City's electric, water, and sewer systems. However, no large development approvals were made during the year.
Have there been instances when the Planning Commission or the City Council has departed from the plan?	No	Neither body meaningfully engaged with plan objectives over the year, so neither of them had a chance to depart from it.
Are the goals and priorities of the plan in sync with the goals and priorities of appointed and elected officials?	Yes	While a cohesive effort is certainly absent, many appointed and elected City officials express strong interest in carrying out goals and tasks outlined in the Master Plan.
Does the plan address the location and types of land uses frequently requested?	Yes	While the plan does address these land uses in a more-or-less effective way, it doesn't exactly handle them the best it can for any given area in the city.
Have there been other studies completed that change the relevancy of the plan?	Yes	Review operations of the 2020 Census were finished in January 2024; many studies, reports, and estimates were released in 2023 which would certainly affect relevancy.



## Action Plan

Based on progress reports (or lack thereof), annual review questions, and other work done by the Commission during the year, it is time to overhaul the Master Plan. In the coming months, the Commission expects to have a Request for Proposals (RFP) posted to seek qualified planning consultants to aid in the City’s Master Plan replacement. More details and information will be forthcoming.

## Zoning Ordinance Amendments

The Commission holds a crucial seat of power among our other elected and appointed bodies, and – when described in terms of “branches of power” – occupies an executive role. In this context, the other two branches are the City Council (legislative) and the City Zoning Board of Appeals (judicial). Being that the City does not have a “zoning commission”, all the duties typically assigned to such a body are held by the Commission in accordance with the Michigan Zoning Enabling Act.<sup>5</sup> Because the Commission also has the powers of a zoning commission, they have the authority to recommend changes to the zoning ordinance or map to the City Council.

### Specific Changes

In total, three proposed amendments were reviewed by the Commission. All of them were recommended to the City Council. See the table below for details.

Origin	Description	Status	Date of Action
City Council	Modified distancing regulations for marihuana establishments by 1) adding a 500-foot buffer between all establishments and higher-education institutions; 2) adding a 500-foot buffer between	Recommended to City Council	Jun 8

<sup>5</sup> State of Michigan, *Michigan Planning Enabling Act*, “Zoning commission; creation; transfer of powers to planning commission; resolution; membership; terms; successors; vacancy; limitation; removal of member; officers” MCL 125.3301

Origin	Description	Status	Date of Action
	growers, processors, & safety compliance facilities and all residential zoning districts; and 3) adding a 100-foot buffer between retailers and all residential zoning districts. Also removed conflicting regulations and trimmed some language for length.		
Commission	Modified setback-related definitions and regulations to better control the placement and character of accessory buildings.	Recommended to City Council	Jun 8
Commission	Added new regulations and modified existing ones to allow personal chicken- & duck-keeping in the City.	Recommended to City Council	Nov 9

### Rezoning Requests

Only one rezoning request was heard. See the table below for details.

Ord. No.	Description	Status	Date of Action
N/A	Moved a single property from an “E” zoning district along Ludington Street to an unspecified residential zoning district.	Denied	Jun 8

### Potential Updates

As mentioned previously in the report, the Commission seeks to implement some form-based zoning in the City. The details of this project are still outstanding, but they are expected to become clear over the coming weeks. The City Zoning Board of Appeals also recommended that the Zoning Ordinance be recodified.

## Development Reviews

2023 was a busy year for the Commission in terms of development reviews – they averaged nearly one per month! Seven of these reviews were for Special Land Use permits – the lions share was dedicated to marijuana retailers – and the remaining four were for Site Plans and City Land Sales. See the table below for details.

Project Type	Location	Description	Status	Recommendation to City Council	Date of Action
Special Land Use	923 Ludington St.	Marihuana Retailer	Approved w/ Conditions	N/A	Jan 12
Special Land Use	2430 Ludington St.	Marihuana Retailer	Approved w/ Conditions	N/A	Feb 9
Special Land Use	1005 Ludington St.	Marihuana Retailer	Approved w/ Conditions	N/A	Feb 9
Special Land Use	920 Willow Creek Rd.	Child Care Center	Approved w/ Conditions	N/A	Jun 8
Special Land Use	615 S 30 <sup>th</sup> St.	Electronic Message Center (EMC) Sign	Approved	N/A	Jun 29
Special Land Use	201 N Lincoln Rd.	Marihuana Retailer	Approved w/ Conditions	N/A	Jul 13
Special Land Use	201 N 30 <sup>th</sup> St.	Marihuana Retailer	Approved	N/A	Aug 10
Site Plan Review	2020 N 19 <sup>th</sup> St.	Storage & Maintenance Garage, Accessory to a Contractor's Office	Approved	N/A	Aug 10
Site Plan Review	1500 3 <sup>rd</sup> Ave. N	Storage & Maintenance Garage, Accessory to a Contractor's Office	Approved	N/A	Sep 14
Land Sale Review	3712 19 <sup>th</sup> Ave. N	Contractors' office and shop, plus storage	N/A	Recommended the land sale	Oct 12
Land Sale Review	2811 N 32 <sup>nd</sup> St.	Contractors' office and shop, plus storage	N/A	Recommended the land sale	Oct 12

## Zoning Board of Appeals

A zoning board of appeals (ZBA) plays a crucial role in the administration of Michigan local governments' zoning ordinances. The ZBA is responsible for reviewing and deciding on appeals related to zoning decisions made by local authorities. This includes granting variances, interpreting zoning ordinances, and addressing other related matters. Just as they do in every other jurisdiction, Escanaba's ZBA acts independently of the Commission and – when described in terms of “branches of power” – occupy a judiciary role. In this context, the other two branches are the Commission (executive) and the City Council (legislative).

Since it is listed as a duty in their Rules of Procedure, the ZBA made a recommendation to the Commission at their first meeting of 2024: that the Zoning Ordinance be recodified, this being to reduce administrative and regulatory costs induced by the Ordinance. Based on the ZBA's recommendation, the Commission will explore this concept during this coming year.

### Variances

As mentioned earlier, the ZBA's duties include granting variances. A variance is official permission to deviate from a requirement of the zoning ordinance. There are two types of variances: Use Variances and Non-Use (Dimensional) Variances. The authority to grant a variance is discretionary and includes the standard of demonstrating a "practical difficulty" for dimensional variances and "unnecessary hardship" for use variances – the Zoning Ordinance does not have provisions for use variances, so only dimensional variances may be granted here.

Dimensional variance requests typically involve buildings and structures that physically cannot be erected in the location required by the zoning ordinance, or if there are other requirements that can't be met. Common dimensional variance requests include front, side or rear yard setbacks, height restrictions, and lot coverage regulations. Some aspect of the property must be unique, not just the applicant's business, family, or financial circumstances. Examples of unique circumstances that can be considered in a variance request include properties with odd dimensions, steep slopes, or unusual easements. The ZBA cannot change its ruling when a new owner buys the business or home. A non-use variance runs with the land in perpetuity.

To demonstrate that a dimensional variance is appropriate, the ZBA must find that there is a practical difficulty which affects the property where compliance with the zoning ordinance would cause an excessive burden to the development of the property. To prove that a practical difficulty exists, the ZBA must review the variance request against specific standards – these standards are contained in our Zoning Ordinance.

The ZBA heard three variance requests in 2023 and nearly heard a fourth – which was rescinded four days before the meeting date. See the table below for details.

Location	Description	Status	Date of Action
536 N Lincoln Rd.	70' reduction of the 100' distancing restriction between marihuana establishments and one-family dwellings.	Denied	Mar 7
517 Ludington St.	6' increase of the maximum copy area allowed for primary wall sign on the building's front wall.	Denied	May 16
2305 1 <sup>st</sup> Ave. S	17.5' from the required 20' rear setback for a proposed building addition.	Approved	Jul 11
200 Ludington St.	2' increase from the 5' front build-to line/minimum setback for a new condo building.	Rescinded by Applicant	Dec 11/15

## Actions by the City Council

Our City Council, just like other similar bodies in Michigan, acts as the legislative branch of power in terms of zoning. They hold the final normal powers of zoning ordinance adoption and amendment, being to hold the last public hearings and the vote of adoption.

Of the four ordinances recommended to the City Council, three of them were adopted and one failed by parliamentary means. That one failure was a point of frustration for the Commission. Per the *Zoning Ordinance*, the City Council “shall approve or deny the amendment based upon its consideration of ... criteria [listed in the Ordinance]”<sup>6</sup>. Those criteria, laid out in the *Ordinance*, were never reviewed.<sup>7</sup> Further, The *Michigan Zoning Enabling Act* stipulates that “... the [City Council] shall consider and vote upon the adoption of a zoning ordinance [amendment] ... .”<sup>8</sup> The Commission even moved to send the proposed amendment back to the

---

<sup>6</sup> City of Escanaba, Michigan, *City Code of Ordinances*, “Zoning Ordinance” app. A, sec. 103.4.2

<sup>7</sup> City of Escanaba, Michigan, *City Code of Ordinances*, “Zoning Ordinance” app. A, sec. 103.4.3(II)

<sup>8</sup> State of Michigan, *Michigan Planning Enabling Act*, “Public hearing to be held by legislative body; conditions; notice; approval of zoning ordinance and amendments by legislative body; filing;

City Council on December 14.<sup>9</sup> However, the City Council had no interest in bringing the topic back up. See the table below for details.

Ord. No.	Description	Status	Date of Action
1271	Removed an “F” zoning district and expanded the boundaries of an adjacent “E” zoning district to cover that former district’s territory on and around N 30 <sup>th</sup> St.	Adopted	Jan 5
1282	Modified distancing regulations for marihuana establishments by 1) adding a 500-foot buffer between all establishments and higher-education institutions; 2) adding a 500-foot buffer between growers, processors, & safety compliance facilities and all residential zoning districts; and 3) adding a 100-foot buffer between retailers and all residential zoning districts. Also removed conflicting regulations and trimmed some language for length.	Adopted	Aug 3
1283	Modified setback-related definitions and regulations to better control the placement and character of accessory buildings.	Adopted	Aug 3
N/A	Added new regulations and modified existing ones to allow personal chicken- & duck-keeping in the City.	Failed <sup>a</sup>	Dec 7
a. Per the approved minutes, “Moore moved to consider this the first reading ... and to set December 21, 2023, for the second reading, public hearing adoption of Ordinance No. 1286. Motion failed due to a lack of a second.”			

## Zoning Map

No changes to the Zoning Map were made during the year. However, it was frequently noted that the map fails to accurately reflect both current and future land use patterns.

---

notice of ordinance adoption; notice mailed to airport manager; information to be included in notice; other statutory requirements superseded” MCL 125.3401.

<sup>9</sup> City of Escanaba Planning Commission, *Official Minutes – December 14, 2023*, NB4(f).

## Training

Just as in previous years, it was a struggle to get minimum training hours done. Most of the members who logged more than 0.5 hours did so through self-guided training. Per the *Bylaws*: “If so provided in the ordinance creating the Commission, failure to meet the training requirements shall result in the member not being reappointed to the Commission.”<sup>10</sup> The “City of Escanaba Planning Commission Ordinance”, however, is silent on the topic. This section of the *Bylaws* also describes the required nature of these training hours, noting a list of organizations which must provide this training. This was left by the wayside in the interest of reaching the minimum hours count for each member. See the table below for details.

Seat	Member’s Name	Training Hours Accrued	Minimum Hours Met
1	David Mason	0.5	N/A
	Kasja Nelson	1.5	No
2	James Hellermann	1.0	No
3	Kelli VanGinhoven	0.5	N/A
	Christiana Reynolds	0.5	No
4	Roy Webber	4.3	Yes
5	Nevin Naser	0.0	N/A
	Patrick Connor	0.5	No
6	Dominic Bennetti	0.5	N/A
	Michael Harris	1.0	No
7	Mark Hannemann	0.0	N/A
	Mark Sadowski	7.0	Yes

---

<sup>10</sup> City of Escanaba Planning Commission, *Bylaws*, “Training” sec. 2.D.

## Joint Meetings

Considered to be key in carrying out the goals and strategies of all development-related boards, it is recommended that joint meetings be held at least annually. They should include:

- City Council
- Planning Commission
- Zoning Board of Appeals
- Historic District Commission
- Brownfield Redevelopment Authority
- Downtown Development Authority

Such joint meetings can serve as a forum for discussion between these boards. These meetings almost always result in stronger planning and development activity. They serve to inform each board on how they can best work together, and to support the change that a community needs.

No such meeting was held in 2023, despite one being requested by the Commission's staff. However, one joint meeting was held with only the City Council and the Commission on January 23. The purpose of this meeting was limited to discussion on marijuana-related zoning decisions; neither board was able to delve into any long-term planning for the community.



## City Council Agenda Item Request

Date: 03/19/2024

Name: Jeff Lampi

Department: Water - Wastewater

Item: Chemical Bid Approval

Meeting date requested: 04/04/24

Explanation for request:

Because the total amount of chemicals needed over the next year are estimated, the bids should be awarded on their units amounts.

1. Award of a bid to Hawkins, Inc., Roseville, MN to furnish approximately 35,000 pounds of Hydro-fluosilicic acid for use in drinking water treatment of \$46.90 / hundred in totes.
2. Award of bid to Aquachem of America, Inc., Appleton, WI to furnish approximately 100 net tons of Aluminum Sulfate liquid in the amount of \$450 per dry ton.
3. Award of bid to Thatcher Co, Salt Lake City, Utah to furnish approximately 95 tons of Dense Soda Ash in 50 pound bags for use in drinking water treatment in the amount of \$26.49/cwt 50-lb bags.
4. Award of bid to Kemira Water Solution, Lawrence, KS to furnish approximately 50 tons of dry weight Ferric Chloride in the amount of \$1,394 / dry ton.
5. Award of bid to Hawkins, Inc., Roseville, MN furnish approximately 10 tons of liquid Chlorine in amount of \$165 per cwt in 150 pound cylinders.

**MEMORANDUM**

March 19, 2024

To: **James McNeil, City Manager**  
Info: Phil DeMay, City Clerk  
From: Jeff Lampi, W & WW Supt.

Re: Recommendations on the “Process Chemical Bids” for both the Water and Wastewater Treatment Plants for fiscal year 2024-2025. *(Highlighted in Yellow and Italicized).*

<b>Hydro-Fluosilicic Acid</b>	<b>Current supplier: Hawkins \$44.50 / hundred (Tote)</b>
<i>Hawkins, Inc.</i>	<i>\$46.90 / hundred (Tote)</i>
<b>Aluminum Sulfate</b>	<b>Current supplier: Aquachem of America, Inc. \$450 / Dry Ton</b>
<i>Aquachem of America, Inc.</i>	<i>\$450.00 / Dry Ton</i>
Chemtrade	\$501.00 / Dry Ton
Usalco, LLC	\$659.94 / Dry Ton
<b>Soda Ash</b>	<b>Current supplier: Thatcher \$29.50 / hundred in 50 lb bags</b>
<i>Thatcher Co.</i>	<i>\$26.49 / hundred in 50 lb bags</i>
DuBois	\$28 / hundred in 50 lb bags
<b>Ferric Chloride</b>	<b>Current supplier: Kemira Inc. \$1,377.00 / Dry Ton</b>
PVS Technologies, Inc.	\$1,450.00 / Dry Ton
<i>Kemira Water Solutions, Inc.</i>	<i>\$1,394.00 / Dry Ton</i>
<b>Chlorine</b>	<b>Current supplier: Hawkins \$140 / cwt in 150 lb cyl.</b>
<i>Hawkins, Inc.</i>	<i>\$165.00 / cwt in 150 lb cyl.</i>

I recommend acceptance of the bids shown above in italicized print and highlighted.

Agenda Item: NB-3  
Date: 04-04-2024

## City Council Agenda Item Request

Date: 3/28/24

Name: Jeff Lampi

Department: Wastewater Department

Item: Live Dive WW Outfall Inspection

Meeting date requested: 4/4/24

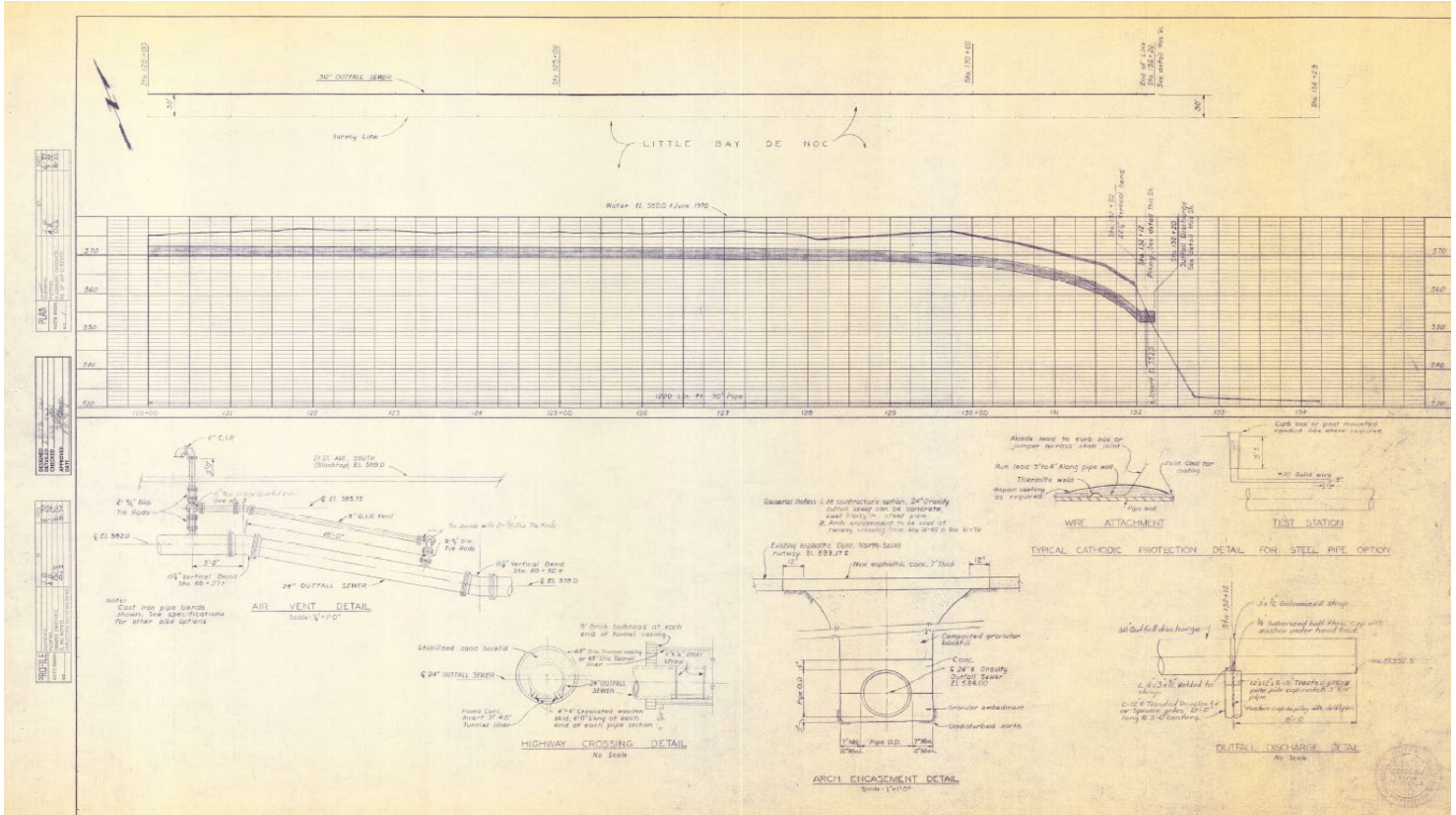
Explanation for request:

Administration is requesting Council's approval to retain Underwater Construction Corporation of Racine WI, for underwater inspection services of the wastewater outfall in an amount not to exceed \$7,000.00.

Money is available and budgeted for this type of activity with the current FY.

<b>Page No:</b> 1		<b>UCC Proposal L-3351</b>		<b>Date:</b> March 25, 2024	
<b>Prepared By:</b> (WI) Jerry Pena		<b>Project Title:</b> 30" Outfall Inspection			
<b>Submitted To:</b> Mr. Kelly Heidbrier		<b>Project Location:</b> Wastewater Treatment Plant located south of WTP Escanaba, MI			
C2AE 1211 Ludington Street Escanaba, MI 49829  Kelly Heidbrier 906-233-9360 (o)		<b>Proposal Basis:</b> *Budgetary Price Based on Rates Below			
		<b>Personnel:</b> UCC would provide:		Maximum # of divers in the water at a time:	
		<b>Six (6) Person Crew</b>		<b>One (1)</b>	
		1	Diver Supervisor		
		3	Diver Mechanic		
		1	Boat Captain 100		
		1	UCC ROV Pilot		
<b>Proposed Services</b>		<b>Work Hrs/Day</b>	8	<b>Days Per Week</b>	1
				<b>Max Water Depth (ft.)</b>	35
<p>Underwater Construction Corporation (UCC) appreciates the opportunity to offer this proposal to C2AE for the above-referenced project.</p> <p>UCC has provided day rates below that can be use for budget purposes.</p> <p>Scope: Inspect 30" outfall at Escanaba Wastewater Treatment Plant. 30" outfall is south of 30" &amp; 20" WTP intakes.</p> <ul style="list-style-type: none"> <li>Mobilize covered under L-3324 Rev1.</li> <li>Inspect 30" outfall structure with ROV or diver (1 day).</li> <li>UCC will provide written report with video. Cost covered under L-3324 Rev1.</li> </ul>		<p>UCC management and safety departments will solely determine whether conditions are conducive to safe diving operations per UCC's Safe Practices Manual, Cold Weather Environment Program and Warm Water Diving Procedure IOP.02.05.1 which will result in project delays and additional cost to the overall budget. Client is responsible for paying for all weather delays.</p> <p>UCC assumes that the flow rate will allow for safe diving. If at any time the current velocity exceeds two (2) feet per second, the UCC VP and safety departments shall be contacted prior to diving. Diving operations will not resume until hazardous conditions have been made safe. UCC is not responsible for project delays due to hazardous conditions.</p> <p>If it is determined that additional equipment is required following project planning, UCC may revise this proposal or provide our equipment billing rate sheets for your consideration.</p>			
<b>Equipment:</b>					
1 Shallow Water Dive Package 1 6,500 Watt Generator 1 DOT Crew Cab 1 Ton Pickup Truck 1 AED 1 Velocity Meter/Flow Meter Dry Suit Low Pressure Air Monitor CO Monitor Confined Space or Diver Extraction System Floating Man Stretcher/Stokes Litter Basket 28' "Ava Rose" Work Boat w/ 200 H.P. Engine (Michigan)		Deep Trekker DTG3 (Minimum three [3] days)			
<b>No.</b>	<b>Description</b>	<b>Rate</b>	<b>Qty.</b>	<b>Sub-Total</b>	
1.01		\$ -		\$ -	
1.02	UCC's All-Inclusive Daily Rate for the first eight (8) hours worked each day, Monday-Friday is:	\$ 5,962.00	1	\$ 5,962.00	
1.03		\$ -		\$ -	
1.04		\$ -		\$ -	
1.05		\$ -		\$ -	
1.06		\$ -		\$ -	
1.07		\$ -		\$ -	
1.08		\$ -		\$ -	
1.09		\$ -		\$ -	
1.10		\$ -		\$ -	
*Materials and Consumables that are not included will be invoiced at cost plus: <b>10%</b>		<b>*TOTAL PRICE</b>		<b>\$ 5,962.00</b>	
*Third Party Services, Bonds and Equipment that are not included will be invoiced at cost plus: <b>10%</b>					
<b>*TAXES ARE NOT INCLUDED</b>		<b>*ADDITIONAL TERMS AND CONDITIONS APPLY</b>		<b>*PRICING IS VALID FOR 60 DAYS</b>	
Signed: <i>jerry pena</i>		Wisconsin / 5144 Douglas Ave. / Racine WI 53402 / www.uccdive.com P: (877) 717-3483 / F: (414) 988-1191 /			
The contents of this proposal and any attachments are confidential and are intended solely for the addressee. Any distribution, reproduction or dissemination is strictly prohibited.					

Page No:	2	UCC Proposal L-3351	Date:	March 25, 2024
Prepared By:	(WI) Jerry Pena	Project Title:	30" Outfall Inspection	
Submitted To:	Mr. Kelly Heidbrier	Project Location:	Wastewater Treatment Plant located south of WTP Escanaba, MI	



30" Outfall ~35 ft water  
Inspect outside structure only.  
GPS coordinates required prior to mobilization

AN EQUAL OPPORTUNITY EMPLOYER

<b>Page No:</b>	<b>3</b>	<b>UCC Proposal L-3351</b>	<b>Date:</b>	<b>March 25, 2024</b>
<b>Prepared By:</b>	(WI) Jerry Pena	<b>Project Title:</b>	30" Outfall Inspection	
<b>Submitted To:</b>	Mr. Kelly Heidbrier	<b>Project Location:</b>	Wastewater Treatment Plant located south of WTP Escanaba, MI	

**Additional Qualifications and Clarifications:**

- COVID-19: If project is scheduled during state and/or federal mandated social distancing additional transportation, equipment disinfection, personnel and or equipment may be necessary. UCC reserves the right to revise this proposal if applicable.
- UCC has assumed C2EA or others will provide the following to support the previously stated services:
- Operation support and red tagging of equipment, as required.
- Unrestricted access to the work area.
- All permits, inclusive of environmental permits will be provided by others, and the approach outlined in our proposal would be in compliance with those permits.
- The public and or vessel traffic will not interfere with the diving operations.
- GPS corrodents required.



<b>Page No:</b>	<b>T&amp;C Page 1 of 2</b>	<b>UCC Proposal L-3351</b>	<b>Date:</b>	<b>March 25, 2024</b>
<b>Prepared By:</b>	(WI) Jerry Pena	<b>Project Title:</b>	30" Outfall Inspection	
<b>Submitted To:</b>	Mr. Kelly Heidbrier	<b>Project Location:</b>	Wastewater Treatment Plant located south of WTP Escanaba, MI	

**TERMS AND CONDITIONS**

**These terms and conditions are the primary overriding terms and conditions of services.**

- 1** Except as expressly provided herein, UCC makes no other warranty or guarantee of any kind, express or implied, including any warranty of merchantability of products or for suitability of products selected or requested by others for the intended purpose.
- 2** Budgetary pricing has been based on the proposed man loading and assumed schedule. It is not to be construed, whether expressed or implied, as a firm-fixed price or a not-to-exceed value for a specific scope of services.
- 3** The Standby Day Rate will apply for delays due to factors outside of UCC's control that cause the extension of the project's operations beyond the terms included in our price.
- 4** All open shop services will be invoiced based on a minimum eight (8) hour day Monday through Friday at the straight time rate. Overtime hours are billable after eight (8) hours Monday through Friday and for all hours worked on Saturdays. Double-time will be invoiced for all hours worked on Sundays and Holidays as listed below.
- 5** All services will be invoiced based on a minimum eight (8) hour day Monday through Sunday and on Holidays at the applicable billing rate.
- 6** UCC-recognized company holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Additionally, any customer holidays that differ from UCC's will be considered UCC holidays.
- 7** Emergent services, defined as services requested and response required within twenty-four hours, may be subject to premium time charges (i.e., shop time, travel time, site hours [minimum eight (8) hours] and travel expense).
- 8** Signed manifests for time and material services or signed delay sheets are considered a customer's formal acceptance of work performed. Signed manifests and delay sheets shall also be used for final invoicing by UCC.
- 9** UCC will have U/W video available; however, this equipment's effectiveness is limited by in-water visibility.
- 10** By accepting UCC's proposal with these terms and conditions attached, you are accepting UCC's terms and conditions as identified herein.
- 11** Starting time for services shall be mutually agreed upon in advance and is subject to the availability of UCC's personnel and equipment.
- 12** Unless otherwise stated in a previously established contract, services will not be provided until the customer signs and returns this quote, or issues a purchase order referencing this quote in its entirety.
- 13** If a project is canceled after UCC's personnel have been mobilized, travel and/or material charges will be applicable. Related charges will be invoiced in accordance with the existing service contract or as identified in the proposal.
- 14** UCC's Regional Vice President and safety department will solely determine whether conditions are conducive to safe diving operations per UCC's Safe Practices Manual.
- 15** UCC assumes that the flow rate will allow for safe diving. If at any time the current velocity exceeds two (2) feet per second, the UCC management and safety departments shall be contacted prior to diving. Diving operations will not resume until hazardous conditions have been made safe. UCC is not responsible for project delays due to hazardous conditions.
- 16** In accordance with all Federal and State OSHA Commercial Diving Rules and Regulations 1910, Subpart "T", 29 CFR 1910.425.3 and ADCI International Consensus Standards for Commercial Diving and Underwater Operations, if a site hazard analysis reveals unforeseen conditions, additional personnel may be required and the project cost would increase accordingly. Such conditions will be communicated in advance to the customer.
- 17** UCC is not responsible for the unsuccessful completion of an inspection as a result of turbidity (<3' visibility), silt accumulation, in the work area or other blockages that impede the progress of the robot vehicle. Every effort shall be made to consult with the client's representative should it be deemed necessary to abort an inspection.
- 18** The ROV operator/technician reserves the sole right to abort the inspection at any time, without penalty, financial or otherwise, due to the presence of any obstruction in the work area which may present serious difficulties in retrieving the ROV. This includes obstructions caused by installations.
- 19** Client will isolate all systems that adversely affect the conditions within the ROV's travel path and work area for the duration of services. Adjacent systems will be considered during the project planning phase and may require additional isolation.
- 20** UCC is liable for their employees; client is responsible for any individual, including himself, herself, or any invitee or other contractors around UCC's work site and our equipment.
- 21** Client is responsible for having permits in place, if required. If permits, bonding, or additional insurance are required to be supplied by UCC, additional costs would be invoiced as additional services.
- 22** Unless otherwise stated, UCC is not responsible for liquidated or consequential damages.

**PLEASE SIGN THE LAST PAGE OF THESE TERMS AND CONDITIONS**

In the event you do not have an established purchase order form or process, please provide billing address, sign, date, and return this proposal via fax to (269) 429-6579, or PDF via email to MIContracts@uccdive.com. By signing this proposal, this will constitute a mutual agreement and you are acknowledging acceptance of this proposal and its terms and conditions in its entirety.

**AN EQUAL OPPORTUNITY EMPLOYER**

The contents of this proposal and any attachments are confidential and are intended solely for the addressee. Any distribution, reproduction or dissemination is strictly prohibited.

<b>Page No:</b>	<b>T&amp;C Page 2 of 2</b>	<b>UCC Proposal L-3351</b>	<b>Date:</b>	<b>March 25, 2024</b>
<b>Prepared By:</b>	(WI) Jerry Pena	<b>Project Title:</b>	30" Outfall Inspection	
<b>Submitted To:</b>	Mr. Kelly Heidbrier	<b>Project Location:</b>	Wastewater Treatment Plant located south of WTP Escanaba, MI	

**TERMS AND CONDITIONS**

**These terms and conditions are the primary overriding terms and conditions of services.**

- 23** UCC understands that prevailing wages will not apply on this project; therefore, pricing is based upon compensating our personnel in accordance with our in-house wages.
- 24** UCC assumes that dual (multiple) classifications can be utilized daily for each employee on the project as required.
- 25** Per Diem will be billed at \$145 /day/person including non-working weekend days while on assignment. In the event the per diem rate does not adequately cover hotel/motel costs and meal allowance due to regional or seasonal price fluctuations, UCC reserves the right to invoice for hotels/motels at cost plus 10%. When this billing is necessary, UCC will also invoice for daily meal allowance at \$50 /day/person.
- 26** All-inclusive daily rates, if provided, will not be prorated for partial day services, unless expressly agreed to in advance.
- 27** All pricing, as offered, excludes any applicable sales and/or use tax. For any services performed outside the state of CT, UCC is not responsible for collecting of/or remittance of sales tax.
- 28** Invoices for services will be submitted monthly or upon completion and are payable in full within thirty (30) calendar days. Past due accounts are subject to 1.5% interest per month (18% per annum) on the unpaid balance as well as any costs and expenses including legal fees incurred by UCC to collect any amount due hereunder.
- 29** In the event an invoice is not paid within our terms, or within previously agreed upon terms, it is UCC's policy to file a lien following 60 days of delinquency.
- 30** UCC's proposal is valid for sixty (60) days from date of issuance unless otherwise noted.
- 31** The parties consent to jurisdiction in a Michigan state court for any action hereunder, and the parties waive a trial by jury in any action hereunder.
- 32**
- 33**
- 34**
- 35**
- 36**
- 37**
- 38**
- 39**
- 40**
- 41**
- 42**
- 43**
- 44**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Billing Address: \_\_\_\_\_

In the event you do not have an established purchase order form or process, please provide billing address, sign, date, and return this proposal via fax to (269) 429-6579, or PDF via email to MIContracts@uccdive.com. By signing this proposal, this will constitute a mutual agreement and you are acknowledging acceptance of this proposal and its terms and conditions in its entirety.

AN EQUAL OPPORTUNITY EMPLOYER

The contents of this proposal and any attachments are confidential and are intended solely for the addressee. Any distribution, reproduction or dissemination is strictly prohibited.



Agenda Item: NB-4  
Date: 04-04-2024

## City Council Agenda Item Request

Date: 3/27/24

Name: Jeff Lampi

Department: Wastewater Department

Item: Additional Engineering Required for Clean Water State Revolving Funds (CWSRF)

Meeting date requested: 4/4/24

Explanation for request:

Administration is requesting Council's approval to compensate C2AE from Escanaba, MI, for additional engineering services with regard to the work within the expended scope of the Clean Water State Revolving Funds (CWSRF- APRA Grant) in an amount of \$251,505.00.

There is no guarantee, however these additional engineering expenses should be reimbursable to the City from the Clean Water SRF-ARPA Grant.

Original Amount: \$ 1,994,000.00

Amendment 01: \$ 251,505.00

New Agreement Amount: \$ 2,245,505.00



March 28, 2024

Jeff Lampi  
Water – Wastewater Superintendent  
City of Escanaba  
410 Ludington Street  
Escanaba, MI 49829

Re: Proposal for Professional Services: Engineering Amendment 01:  
Wastewater CWSRF City of Escanaba – Design and Construction Services

Dear Mr. Lampi,

As C2AE continues to develop the design plans and specifications for the CWSRF Wastewater Project for the City of Escanaba, we have been tasked with several unforeseen design efforts that have added to the complexity of the project. Typically, C2AE has normally accounted for minor changes in project scope and design features that we absorb as part of the normal design engineering process. However, the changes outlined in this Engineering Amendment are far more extensive than what we can account for in the original agreement.

C2AE is requesting approval from the City of Escanaba for an Engineering Amendment for additional design work and construction administration services. Description of work/scope is as follows:

Additional Engineering Work added to the Project:

A) Relocation of Ludington Street Lift Station:

The proposed location of the new lift station had to be modified due to unsuitable soils found when completing the initial geotechnical report. A new location was given that is adjacent to the existing Lift Station. New soil borings and geotechnical report had to be conducted along with additional field topo survey.

An additional new conceptual site layout planning, lift station configuring, sanitary sewer redesign and overall Basis of Design was prepared for the new site.

Added Design Service Fee

Design Engineering Cost:	\$72,125.00
Construction Administration:	No additional cost
Total Cost for A) Relocation of Ludington Street Lift Station:	\$72,125.00

B) Ludington Street Roof Drain Disconnect:

Through correspondence with EGLE, roof drains that are directly connected to the sanitary sewer are eligible cost for reimbursement through the ARPA grant. We suspect the several hundred thousand gallons of clean water can be diverted away from the sanitary sewer and WWTP if the drains are disconnected and rerouted.

C2AE began field investigations in determining what buildings are currently interconnected to the sanitary sewer and will continue performing these inspections throughout the spring/summer. Construction administration services will be

needed to observe work completed and prepare proper contractor pay applications, change orders, and administration work with EGLE.

A separate bidding package will be developed for the construction work. The work is more geared towards a building contractor rather than an underground construction company, which should allow for local contractors to bid on the work.

Added Design Service Fee

Roof Drain Inspection work to date:	\$ 8,930.00
Future Inspections and bid document:	<u>\$25,000.00</u>
	\$33,930.00 Design Total
Bidding and Construction Administration:	<u>\$40,000.00</u> CA Total
Total Cost for B) Ludington Roof Drain Disconnect:	\$73,930.00

C) Ludington Street Storm System Design:

The original intention was to replace the existing storm sewer along Ludington Street as part of the ARPA Project. Through more detailed design analysis, it was determined that the severely undersized existing storm sewer would need to be upsized and doubled to provide a reasonable amount of storm conveyance and reduce risk of frequency and severity of flooding. Design plans have been developed to include the second storm sewer along Ludington Street with the road design. Storm outfall will need permitting and Construction Administration Services provided during construction.

Added Design Service Fee

Storm sewer analysis and design (second sewer):	\$48,500.00
Construction Administration:	<u>\$52,500.00</u>
Total Cost for C) Ludington Street Storm Design:	\$101,000.00

D) Storm and Sanitary Sewer Design 6<sup>th</sup> Street South and 3<sup>rd</sup> Street North:

The project limits had to be extended to include 2 blocks on 6<sup>th</sup> Street South to add storm and sanitary sewer. Elevation and grades for both utilities had to be adjusted to incorporate the work planned on Ludington Street. Sanitary sewer conflicted with the storm sewer which required lowering of the utility.

3<sup>rd</sup> Street North sanitary sewer replacement was needed to match the new sewer grades planned for Ludington Street.

Added Design Service Fee

Storm and Sanitary Design:	\$ 7,250.00
Construction Administration:	<u>\$11,900.00</u>
Total Cost for D) 6 <sup>th</sup> and 3 <sup>rd</sup> Street Utilities:	\$19,150.00

E) Delete Part I – Part III SRF Application Assistance:

Two design service items will not be needed because the CWSRF is now funded by ARPA Grant monies.

Deleted Design Service Fee

Part I and Part II CWSRF Application:	-\$ 7,350.00
Part III CWSRF Application:	<u>-\$ 7,350.00</u>
Total Deduct for E) Part I – Part III SRF Application:	-\$14,700.00

The total amount requested in Amendment 01 is \$251,505.

Original Amount:	\$ 1,994,000.00
Amendment 01:	\$ 251,505.00
New Agreement Amount:	\$ 2,245,505.00

C2AE will correspond with EGLE and the ARPA Grant Administrator regarding the additional Engineering Services. The intent is that the added Engineering Services fees are an approved eligible expense that can be applied towards the ARPA grant.

Thank you for your consideration in this matter.

Sincerely,  
C2AE



Darren Pionk, PE  
Project Manager

Accepted by:

---

James McNeil, City of Escanaba

---

Date

This is EXHIBIT K, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 7-20-2023.

AMENDMENT TO OWNER-ENGINEER AGREEMENT  
Amendment No. 01

The Effective Date of this Amendment is: April 4, 2024.

Background Data

Effective Date of Owner-Engineer Agreement: July 20, 2023

Owner: City of Escanaba

Engineer: C2AE

Project: Escanaba CWSRF Improvement Project

Nature of Amendment:

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

*See attached summary letter.*

Agreement Summary:

Original agreement amount:	\$ <u>1,994,000</u>
Net change for prior amendments:	\$ <u>0</u>
This amendment amount:	\$ <u>251,505</u>
Adjusted Agreement amount:	\$ <u>2,245,505</u>

Change in time for services (days or date, as applicable): \_\_\_\_\_


The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:  
City of Escanaba

ENGINEER:  
Capital Consultants, Inc. dba C2AE

---

By:   
Print  
name: Darren Pionk  
Title: Project Manager  
Date Signed: 3/28/2024

---

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Agenda Item: NB-5  
Date: 04-04-2024

## City Council Agenda Item Request

Date: 3/27/24

Name: Jeff Lampi

Department: Wastewater Department

Item: Engineering for the MDOT US-2 Reconstruction Project

Meeting date requested: 4/4/24

Explanation for request:

Administration is requesting Council's approval to retain C2AE from Escanaba, MI, for engineering services for the 30% base plans with regard to the MDOT US-2 Reconstruction Project in an amount not to exceed \$19,250.00.

Money for this type of activity is budgeted and available within the current Water Department's fiscal year.



1211 Ludington Street  
Escanaba, MI 49829  
906.233.9360  
www.c2ae.com

March 28, 2024

Jeff Lampi  
Water – Wastewater Superintendent  
City of Escanaba  
401 Ludington Street  
Escanaba, MI 49829

## Re: Proposal for Professional Services: MDOT US -2 Reconstruction Project

Dear Mr. Lampi,

The Michigan Department of Transportation (MDOT) has requested a 30% level base plan development and cost opinion for the US-2 Reconstruction Project in the City of Escanaba. Thus far, C2AE has worked in conjunction with MDOT and the City of Escanaba on preliminary planning and routing for the project. Our involvement has been limited to the City utility components and MDOT will be designing and construction administering the road construction.

For the City of Escanaba, this is the most cost-effective opportunity to replace old and undersized utilities within the US-2 Right OF Way corridor. The City of Escanaba will be responsible for the utility construction and design while MDOT will be responsible for all road restoration expenses towards the project.

### Project Understanding

MDOT is requesting a 30% level Base Plan development for the work on US-2 within the City Limits. They are requesting this information be submitted to Project Wise no later than May 14, 2024. This will include utilizing MDOT base maps for the background development of utility sheets. The 30% level plans will include a preliminary layout of the city utilities (water, sanitary sewer, and possibly portions of storm sewer). Profile drawings will not be necessary for this deliverable and will be part of future completion milestones MDOT will schedule.

In addition, MDOT is requesting a 30% level Engineers Opinion of Probable Costs to accompany the drawings. The cost will be considered preliminary and will need adjustment and revisions as the project continues to be refined.

### Scope

C2AE will prepare a 30% level base utility plan utilizing plan sheets generated by MDOT. This will include potential watermain, sanitary sewer and storm sewer upgrades within the US-2 Right of Way in the City of Escanaba. No profile sheets will be prepared at this level of work.

C2AE will prepare an Engineers Opinion of Cost outlining the probable pay items, quantities and unit pricing for items shown on the 230% level plans. Cost Opinion will be formatted in MERL with the use of MDOT pay codes.



C2AE will coordinate and host two project meetings with the City of Escanaba. These meeting will be used to review current utility ages and conditions, and to map out an approximate layout of the utilities. Final review meeting with the City of Escanaba Water and Wastewater representative to receive approval and submittal to MDOT.

## Assumptions

- C2AE will have access to MDOT Base Files for the development of the utility sheets.
- C2AE will be able to use AutoCAD as the design tool for plan preparation.
- No technical or Special Provision development in this phase of work.
- As the project develops and a full scope of utility work is finalized, future phases of design and construction administration services proposals will be submitted to the City for review and approval.

## Deliverable

- 30% Base Plan – City Utility Sheets
- 30% level Engineer Opinion of Probable Cost

## Schedule

Per MDOT Schedule, 30% Base Plans and Opinion of Probable Cost are due May 14, 2024.

## Fee

Fees associated with the scope of work outlined in this proposal will be a lump sum fee of \$19,250.

We have included our Standard Contract Provisions as part of our proposal. If the terms and conditions as stated are acceptable, please countersign and return one (1) copy to our office. Please do not hesitate to contact us should you have any questions or concerns, or if you need additional information.

Sincerely,  
C2AE



Darren Pionk, P.E.  
Project Manager

Accepted by:

---

Jeff Lampi, City of Escanaba

---

Date

## C2AE Standard Owner-A/E Contract Provisions, 2024

The parties to this agreement, Capital Consultants, Inc., dba "C2AE" in Michigan and dba "Capital Consultants Architecture and Engineering" in New York, hereinafter called C2AE and "City of Escanaba", in Michigan, hereinafter called OWNER, hereby agree to the following conditions:

- A. Scope of Services: OWNER and C2AE have agreed to a written description of services C2AE will provide to OWNER for an established compensation, hereafter referred to as "Scope of Services". Additional Services may be agreed to in writing by OWNER and C2AE in addition to the Scope of Services. Services not set forth in written agreement are specifically excluded from the scope of C2AE's services, including any "financial advising" services. C2AE assumes no responsibility to perform any services not specifically agreed to in writing.
- B. Standard of Care: C2AE shall perform its services consistent with the professional skill, care, and timeliness ordinarily provided by professional engineers and architects practicing in circumstances of similar time and place. C2AE makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by C2AE. However, C2AE shall correct any technical accuracy deficiencies in C2AE's Instruments of Service without additional compensation.
- C. Schedule: C2AE shall ordinarily perform its services within a reasonable time. Upon OWNER's request, C2AE shall prepare and submit for OWNER approval a detailed schedule for the performance of C2AE's services. This schedule shall include reasonable allowances for review and approval times required by OWNER, performance of services by OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by OWNER, or for delays or other causes beyond C2AE's reasonable control.
- D. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to C2AE are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, C2AE may call for renegotiation of appropriate portions of this Agreement. C2AE shall notify OWNER of the changed conditions necessitating renegotiation, and both parties shall promptly and in good faith renegotiate this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
- E. Payment Terms: Invoices prepared to C2AE's standard format will typically be submitted by C2AE monthly, are due upon receipt, and shall be considered past due if not paid within thirty (30) calendar days of the due date. If work is abandoned or suspended, C2AE shall be paid in full for services performed prior to receipt of written notice from OWNER of abandonment or suspension. If OWNER fails to make payments when due, C2AE may charge interest at one-and-one-half (1.5) percent or the maximum rate allowable by law, whichever is less, per month on the past due amount, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. In addition, if OWNER fails to make payments when due or otherwise is in breach of this Agreement, C2AE may suspend performance of services when any invoice for services remains unpaid 60 days after the date of the invoice and upon five (5) calendar days' notice to OWNER. C2AE shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER. Upon payment in full by OWNER, C2AE shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for C2AE to resume performance.
- F. Disputed Invoices: OWNER shall not withhold amounts from C2AE's compensation to impose a penalty or liquidated damages on C2AE, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless C2AE agrees or has been found liable for the amounts in a binding dispute resolution proceeding. If OWNER objects to any portion of an invoice, OWNER shall so notify C2AE in writing within ten (10) calendar days of receipt of the invoice. OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation

between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement.

G. Regulatory Compliance: C2AE shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of submission to building authorities, including the Americans with Disabilities Act (ADA) which provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. Design changes made necessary by newly enacted laws, codes and regulations after submission date shall entitle C2AE to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement. OWNER acknowledges that the requirements of laws, codes, and regulations, including the ADA, will be subject to various and possibly contradictory interpretations. C2AE, therefore, will use its reasonable professional efforts and judgment to interpret applicable requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. C2AE, however, cannot and does not warrant or guarantee that OWNER's project will comply with all interpretations of all the requirements of federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.

H. Errors and Omissions and CONSULTANT's Limit of Liability: In recognition of the relative risks and benefits of the Project to both OWNER and C2AE, the risks have been allocated such that OWNER agrees, to the fullest extent permitted by law, to limit the liability of C2AE and its officers, directors, shareholders, employees, and sub-consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of C2AE and its officers, directors, shareholders, employees, and sub-consultants shall not exceed \$10,000 or C2AE's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

I. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor C2AE nor their respective officers, directors, shareholders, employees, and sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and C2AE shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

J. Dispute Resolution: OWNER agrees that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing for arbitration as set forth below and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration. If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties mutually agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law. The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known

of the existence of the claim, dispute, or other matter. If the demand for arbitration is not effectuated within one (1) year, the claim, dispute, or other matter shall be forever barred and not mandatory. The decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings action against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

K. Mutual Indemnification: Neither OWNER nor C2AE shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. C2AE agrees, to the fullest extent permitted by law, to indemnify and hold harmless OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by C2AE's negligent performance of professional services under this Agreement and that of its sub-consultants or anyone for whom C2AE is legally liable. Likewise, OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless C2AE, its officers, directors, employees and sub-consultants (collectively, C2AE) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by OWNER's negligent acts in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom OWNER is legally liable.

L. Use of Documents: All Documents (data, reports, drawings, specifications, models, and other deliverables, whether in printed or digital format) are Instruments of Service for which C2AE shall retain all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of C2AE. C2AE grants to OWNER a nonexclusive license to use C2AE's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that OWNER substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The license granted under this section permits OWNER to authorize the Contractor, Construction Manager, Subcontractors, and material or equipment suppliers, as well as OWNER's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by C2AE, or for use or reuse by OWNER or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by C2AE; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by C2AE, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to C2AE or to its officers, directors, employees, and sub-consultants; (3) OWNER shall indemnify and hold harmless C2AE and its officers, directors, employees, and sub-consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by C2AE; and (4) such limited license to OWNER shall not create any rights in third parties. C2AE and OWNER warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

M. Construction Activities: Neither the professional activities of C2AE nor the presence of C2AE or its employees and sub-consultants at a project site shall relieve the Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. C2AE and its personnel have no authority to approve construction change orders or to issue stop work orders. C2AE and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. OWNER agrees that the Contractor shall be solely responsible for jobsite safety and warrants that this intent shall be carried out in OWNER's contract with the Contractor. OWNER also agrees that OWNER and C2AE and its sub-consultants shall be included as indemnified parties by the Contractor in OWNER-Contractor agreement and shall be made additional insureds under the Contractor's policies of general liability insurance.

N. Hazardous Materials: As used in this Agreement, the term *hazardous materials* shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site. Both parties acknowledge that C2AE's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event C2AE or any other party encounters any hazardous or toxic materials, or should it become known to C2AE that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of C2AE's services, C2AE may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until OWNER retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless C2AE, its officers, directors, employees and sub-consultants (collectively, C2AE) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of C2AE.

O. Opinions of Probable Construction Cost: When in the Scope of Services C2AE provides opinions of probable construction cost, OWNER understands that C2AE has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that C2AE's opinions of probable construction costs are made on the basis of C2AE's professional judgment and experience. C2AE makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from C2AE's opinion of probable construction cost.

P. Distribution of Digital Documents: When in the Scope of Services C2AE provides digital information extracted from its Instruments of Service to OWNER or to others on behalf of OWNER, the recipient of the information will be required to agree to C2AE's Release of Electronic Documents Agreement, including compensation for C2AE to prepare the files. Under no circumstances shall delivery of electronic files by C2AE be deemed a sale, and C2AE makes no warranties, either express or implied, of merchantability and fitness of electronic files for any particular purpose. In no event shall C2AE be liable for any loss of profit or any consequential damages as a result of OWNER's or other's use or reuse of these electronic files.

Q. Record Documents: When identified in the Scope of Services and upon completion of the work C2AE shall compile for and deliver to OWNER a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which C2AE shall assume will be reliable, C2AE cannot and does not warrant their accuracy.

R. Design Without Construction Administration: When the Scope of Services does not include substantial involvement in project observation or review of the Contractor's performance or other construction phase services, OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation, and OWNER waives any claims against C2AE that may be in any way connected thereto. In addition, OWNER agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless C2AE, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of C2AE.

S. On-site Construction Observation: When the Scope of Services includes part-time or full-time on-site project representation in order to observe the progress and quality of the work completed by the Contractor such observation is not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather is to allow C2AE, as an experienced professional, to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents. Such observation shall include keeping OWNER informed about the progress of the work and C2AE shall endeavor to guard OWNER against deficiencies in the work. In any case, C2AE shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. Finally, C2AE shall not be responsible for any acts or omissions of the Contractor, sub-contractor, any entity performing any portions of the work, or any agents or employees of any of them and does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.