



# CITY COUNCIL MEETING AGENDA

1<sup>st</sup> and 3<sup>rd</sup> Thursday of the Month

Marc D. Tall, Mayor  
Ronald J. Beauchamp, Mayor Pro-Tem  
Patricia A. Baribeau, Council Member  
Ralph B. Blasier, Council Member  
Michael R. Sattem, Council Member

James V. O'Toole, City Manager  
Robert S. Richards, CMC, City Clerk  
Ralph B.K. Peterson, City Attorney

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

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items listed 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, July 2, 2015, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE – Robert S. Richards, City Clerk

APPROVAL/CORRECTION(S) TO MINUTES – Special Meeting June 10, 2015, Regular Meeting June 18, 2015

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION

BRIEF PUBLIC COMMENT

PUBLIC HEARINGS – None

UNFINISHED BUSINESS – None

NEW BUSINESS

**1. Approval – Freedom of Information Act (FOIA) Policy Statement.**

**Explanation:** Administration is seeking Council approval of a revised Freedom of Information Act policy as mandated by Public Act 563 of 2014, which amends the Michigan Freedom of Information Act, Act 442 of 1976.

**2. Approval – Next Michigan Superior Trade Zone Corporation Board – Delegate Appointment.**

**Explanation:** Administration is seeking Council approval to appoint Mrs. Daina Norden City Assessor as the primary City of Escanaba representative to the Next Michigan Superior Trade Zone Corporation board. Additionally, Administration is seeking Council approval to appoint Mr. James V. O'Toole City Manager as an alternate City of Escanaba representative to the Next Michigan Superior Trade Zone Corporation board to serve in the primary member's place and stead if the primary member is absent from a Corporation Board meeting.

**3. Approval - Tennis Court Resurface Project – Recreation Department.**

**Explanation:** Administration is seeking Council approval to hire American Systems of Wisconsin, Inc. of Suamico, Wisconsin, in the amount of \$9,700 to provide all labor and materials, filing, resurfacing and related work for the Veteran's Court Resurfacing Project. This purchase is included in the upcoming fiscal year budget.

**4. Update – Sale of the Power Plant – City Manager's Office.**

**Explanation:** Administration will update the Council and public on the latest developments related to the Escanaba generating facility.

Council Agenda - July 2, 2015

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

Respectfully Submitted

  
James V. O'Toole  
City Manager

**OFFICIAL PROCEEDINGS**  
**CITY COUNCIL**  
**ELECTRICAL ADVISORY COMMITTEE**  
**CITY OF ESCANABA, MICHIGAN**  
**Special Joint Meeting**  
**Wednesday, June 10, 2015**

Pursuit to a meeting notice posted May 27, 2015, the meeting was called to order by the Mayor Marc D. Tall at 6:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ronald J. Beauchamp, Ralph B. Blasier, and Michael R. Sattem.

Absent: None.

Present: Electrical Advisory Committee (EAC) Members: Chairperson Tim Wilson, John Mellinger, and Glendon Brown.

Absent: EAC Members Larry Arkens, Ann Bissell, John Anthony, One vacancy and Power Plant Liaison.

Also Present: City Manager James V. O'Toole, Electric Superintendent Mike Furmanski, Melissa Becotte, Pro Energy Services, Inc. Representative Charles Detiege, members of the public and media.

**ADJUSTMENTS TO THE AGENDA**

Blasier moved, Beauchamp seconded, **CARRIED UNANIMOUSLY**, to approve the Joint City Council & Electrical Advisory Committee Agenda as submitted.

**CONFLICT OF INTEREST** – None

**UNFINISHED BUSINESS**

**Discussion – Senate Bill 282 and House Bill 4575 – Michigan Electric Infrastructure Act.**

Council discussed Senate Bill 282 and House Bill 4575, bills which were designed to regulate the siting and construction of certain transmission lines; to prescribe powers and duties of certain state and local entities and officials; to create a board; to prescribe the board's powers and duties; and to provide for certain fees. Council directed Administration to prepare a Resolution in Opposition to Senate Bill 282 and House Bill 4575, and to have the Resolution distributed to all elected State Officials from the Upper Peninsula, all members of the House and Senate Subcommittees on Energy and Policy, all Upper Peninsula media outlets, and Governor Rick Snyder.

Upon motion made by Council Member Beauchamp, seconded by Council Member Baribeau, the following resolution was adopted:

**A Resolution  
In Opposition to  
Senate Bill 282 and House Bill 4575**

**WHEREAS**, Michigan lawmakers are proposing to form a review board for the purpose of evaluating the benefits of building electrical transmission facilities seeking to increase the transmission capacity between the Lower Peninsula and the Upper Peninsula of Michigan; and

**WHEREAS**, Legislation proposes that Michigan consumers pay for the cost of transmission facilities that are intended to reduce the congestion of moving power between the Lower Peninsula and the Upper Peninsula of Michigan, without regard for cost causation and allocation principals; and

**WHEREAS**, The U.P. Energy Shortfall is a result of generation retirements in the U.P. The current legislation assumes that interconnection of the peninsulas is the best solution without any consideration of available generation from the lower peninsula; and

**WHEREAS**, Current legislation disregards that many load centers in Wisconsin, Ohio, and Indiana are currently supplied with reliable, low cost power from another state, and transmission improvements have been made across state lines. Such legislation must acknowledge the potential for increased electrical rates by consumers not benefiting from the transmission additions; and

**WHEREAS**, SB 282 and HB 4575 does not take into account the many economic and technical barriers that stand in the way of making a case that more transmission would reduce electric rates for Michigan customers. Any proposed project would have to meet the threshold of having lower revenue requirements for the new transmission compared to the projected congestion and loss savings of an entity having the opportunity to contract for lower cost power in the lower peninsula; and

**WHEREAS**, MISO currently includes economic considerations in transmission planning studies and all stakeholders have the opportunity to provide input into the transmission planning process; and

**WHEREAS**, Current legislation prescribes the makeup of the Board, which limits the expertise needed for a board tasked with making decisions regarding complex matters; and

**WHEREAS**, The tasks assigned to the board are very complex, which will require technological expertise. The board will not likely have the expertise to conduct these studies on their own, thus consultants or staff will be required, with no mechanism described for who pays for these costs; and

**BE IT RESOLVED**: That the City of Escanaba, City Council, stands in opposition to Senate Bill 282 and House Bill 4575, bills attempting to regulate the siting and construction of

certain electric transmission lines; to prescribe powers and duties of certain state and local entities and officials; to create a board; to prescribe the board's powers and duties; and to provide certain fees for Michigan's long term electrical energy needs; and

**THEREFORE BE IT RESOLVED**, that a copy of this resolution be sent to all elected State Officials from the Upper Peninsula, to all members of the Senate and House Subcommittee's on Energy, all Upper Peninsula media outlets, and Governor Rick Snyder.

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

Ayes: Beauchamp, Baribeau, Sattem, Blasier, Tall

Nays: None

**RESOLUTION DECLARED ADOPTED.**

## **NEW BUSINESS**

### **Update - Electric Department –General Operations.**

Electrical Superintendent Mike Furmanski updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the current departmental activities.

- Staff daily work was back to normal;
- Reviewed West Side Sub-Station check-list.

### **Update – Shutdown of Power Plant – Pro Energy Services, Inc.**

Charles Detiege of Pro Energy Services, Inc. updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the power plant shut down. (See Attachment – A)

### **Approval – Professional Services – Combustion Turbine Inspection.**

Administration sought Council approval to hire Energis High Voltage Resources of Green Bay, WI to conduct an evaluation of the combustion turbine which was damaged on February 2, 2015 as part of the substation malfunction. The purpose of the evaluation was to obtain a cost estimate to repair.

**NB-3** Blasier moved, Sattem seconded, to approve to hire Energis High Voltage Resources of Green Bay, WI to conduct an evaluation of the combustion turbine which was damaged on February 2, 2015 as part of the substation malfunction.

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

Ayes: Blasier, Sattem, Beauchamp, Baribeau, Tall

Nays: None

**MOTION CARRIED.**

**Approval – Mandated Fire Rated Clothing Purchase.**

Administration sought Council approval to purchase fire rated clothing for departmental linemen from Aramark Uniform Services of Salem, NJ in an amount not to exceed \$16,000. This purchase was not included in the current fiscal year budget but was being mandated by State law.

**NB-4** Beauchamp moved, Blasier seconded, to purchase fire rated clothing for departmental linemen from Aramark Uniform Services of Salem, NJ in an amount not to exceed \$16,000.

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

Ayes: Beauchamp, Blasier, Baribeau, Sattem, Tall

Nays: None

**MOTION CARRIED.**

**Approval – Professional Services – Power Plant Security**

Administration sought Council approval to enter into a professional services agreement with Delta Force P.I. of Escanaba, MI in an amount not to exceed \$36,000 for security services at the Power Plant property between June 15, 2015 and December 31, 2015. This service was not included in the current fiscal year budget. Council also asked for a report regarding the purchase of remote high end security cameras.

**NB-5** Blasier moved, Beauchamp seconded, to enter into a professional services agreement with Delta Force P.I. of Escanaba, MI in an amount not to exceed \$36,000 for security services at the Power Plant property between June 15, 2015 and December 31, 2015.

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

Ayes: Blasier, Beauchamp, Sattem, Baribeau, Tall

Nays: None

**MOTION CARRIED.**

**Discussion – Wholesale Power Purchase.**

Electric Superintendent Mike Furmanski updated the Council on the City's existing wholesale power purchase contract and talked about future wholesale power rates. (See Attachment – B) During discussion, Mr. Furmanski recommended to extend the NextEra Contract from January 2017 through May 2020 at the blended rate of \$55.86, and to do nothing with the capacity options at this time, but continue to review prices.

After further discussion, Beauchamp moved, Baribeau seconded, to extend the City of Escanaba NextEra Contract from January 1, 2017 through May 31, 2020, at the blended rate.

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

Ayes: Beauchamp, Baribeau, Blasier, Sattem, Tall  
Nays: None

**MOTION CARRIED.**

After further discussion, it was Council Consensus to do nothing with Capacity options at this time, but to continue reviewing prices and report back to Council.

**Update – Power Plant Sale.**

Manager O'Toole updated the City Council, Electrical Advisory Committee and the Citizens of Escanaba regarding the sale of the plant. He advised Term Sheet negotiations continued with Sterling Energy for the sale of the Power Plant. Two requests for proposals were received. Administration was continuing to review them.

**GENERAL PUBLIC COMMENT**

City resident, and Power Plant employee Don Racicot, commented on the Power Plant security issue recommending the security by individuals instead of security cameras. Mr. Racicot also commented on Sterling Energy term sheet.

Manager O'Toole stated negotiations with Sterling Energy never stopped regarding the sale of the City Power Plant. It has always been the City's desire to sell the Power Plant to someone who would continue to use the Power Plant to sell power and continue to employ the workers at the plant. Manager O'Toole further advised that if a final sale agreement with Sterling Energy was reached, a special Council Meeting would be scheduled.

**COUNCIL/COMMITTEE, STAFF REPORTS – None**

**ADJOURNMENT**

Joint City Council & Electrical Advisory Minutes  
June 10, 2015 – cont.

Hearing no further public comment, or further reports from the Electrical Advisory Committee or Council, the meeting adjourned at 6:55 p.m.

Respectfully submitted,

Robert S. Richards  
City Clerk

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

## Shutdown Update

Items	Complete
Drained Boilers with Drum Doors open	100%
Drain turbine oil from reservoirs – Steam Turbines	100%
Remove coal from bunkers - 682 tons total	100%
Clean ash from the boilers, precipitators, and ash silo	100%
Drain Condensate, Feedwater, Make-up & Bearing Water	100%
Drain Deaerator, Feedwater heaters (shell & tube bundles)	100%
Drain Permeate lines and tank	100%
Drain Hotwells and Air ejector float traps	100%
Drain all sight glasses, transmitters and float traps	100%
Remove, drain, and clean all Chemical tanks and lines.	100%
Ensure circulating water lines are drain, barricade discharge	100%
Secure all access point on all buildings, Protect lower level windows from breakage, Repair all broken windows, seal up all building penetrations (pigeon/rodent control). Place "Warning Signage", ie Building contains Asbestos, Lead, Arsenic, etc. at all entry points.	90%
Asbestos & Mercury Switches Removed	90%
Isolate DC power – open breakers, remove batteries	75%
Open all breakers, (rack-out)	75%
Tools & office equipment moved to central and secured location.	50%
Remove contents from lube oil storage room, pump waste oil storage tank, Remove hazardous liquid products, boiler chemicals, water treatment chemicals	50%
Mobile equipment will be moved to Electric and Public works locaton -	0%
Relocate Station Records and Equipment files to a secure location	0%
Remove lower section of Precipitator ladders	0%
Shut off water to Station, Pump House, ensure fire hydrants are charged	0%
Pump Septic tank, Office Bathroom Sump, Combustion Turbine in ground Sump Tanks	0%
Drain Station water lines, domestic, service & fire protection	0%
Remove Permeate Tank Ladder	0%
Drain domestic water heaters	0%
Terminate Phone Service	0%
Plug all Floor Drains including floor trenches	0%
Maintain Substation cable vault sump pump until sale status is determined	?
Isolate AC power to Station (alternative power source for fuel transfer station, vault sump pump)	?
Combustion Turbine was left alone per City Instruction.	100%

## Wholesale Power Discussion

June 10, 2015

1

- Components of Wholesale Power
  - Energy
  - Capacity
  - Transmission
  - MISO
  - Other Costs – SSR, MiRECs, Dispatch

2

- Energy and Capacity
  - 2 components we have some control on
  - Little control over other 3 components
- NextEra
  - Market based rate, guaranteed price
  - Short term contracts
  - Longer term hedges available
- GLU
  - Mix of contracts, plus DA/RT MISO market
  - Mix includes long and short term contracts
  - Prices are not guaranteed

3

- Energy
  - Currently 80% of wholesale power costs
  - Currently under contract with NextEra
    - Fixed price, full requirements to Escanaba
      - \$57.10 thru Dec 2016
      - \$52.32 for C/Y 2017
      - \$54.94 for C/Y 2018
      - \$59.00 indicative for Jan 2019 – May 2020
  - Other options
    - NextEra
      - Full requirements to hubs
      - Blocks of energy to Escanaba
      - Blocks of energy to hubs
    - Great Lakes Utilities
      - Power pool
      - Mixed contracts and market

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- Capacity
  - Currently buying from Great Lakes Utilities
    - 15/16 \$0.41 under contract
      - \$172,200
    - 16/17 \$0.61 under contract
      - \$256,200
  - Indicative prices much higher
    - 17/18 and beyond are \$3+
      - \$1,260,000 @ \$3.00/kw-mo
      - \$1,386,000 @ \$3.30/kw-mo

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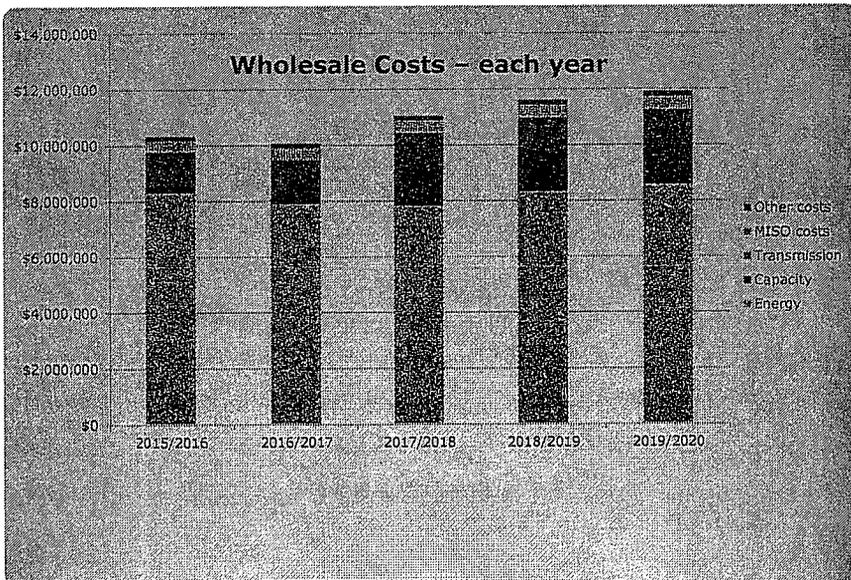
- Transmission
  - ATC
- MISO
  - Market costs
- Other Costs
  - SSR costs

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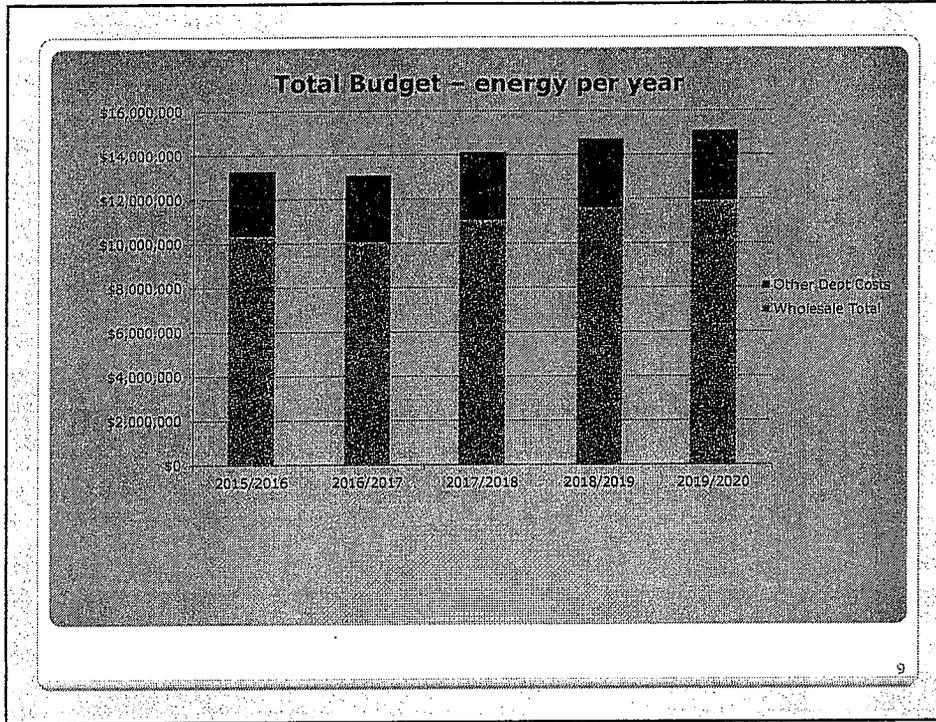
5 year projections buying energy a year at a time  
 '17 @ \$52.32, '18 @ \$54.94, '19/20 @ \$59.00

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Energy	\$8,308,050	\$7,902,348	\$7,834,933	\$8,338,363	\$8,584,500
Capacity	\$172,200	\$256,200	\$1,260,000	\$1,260,000	\$1,260,000
Transmission	\$1,285,000	\$1,310,700	\$1,336,914	\$1,363,652	\$1,390,925
MISO costs	\$400,000	\$420,000	\$441,000	\$463,050	\$486,203
Other costs	\$170,250	\$173,655	\$177,128	\$180,671	\$184,284
<b>Wholesale Total</b>	<b>\$10,335,500</b>	<b>\$10,062,903</b>	<b>\$11,049,975</b>	<b>\$11,605,735</b>	<b>\$11,905,912</b>
Other Dept Costs	\$2,935,214	\$2,993,918	\$3,053,797	\$3,114,873	\$3,177,170
<b>Total Budget</b>	<b>\$13,270,714</b>	<b>\$13,056,821</b>	<b>\$14,103,771</b>	<b>\$14,720,608</b>	<b>\$15,083,082</b>

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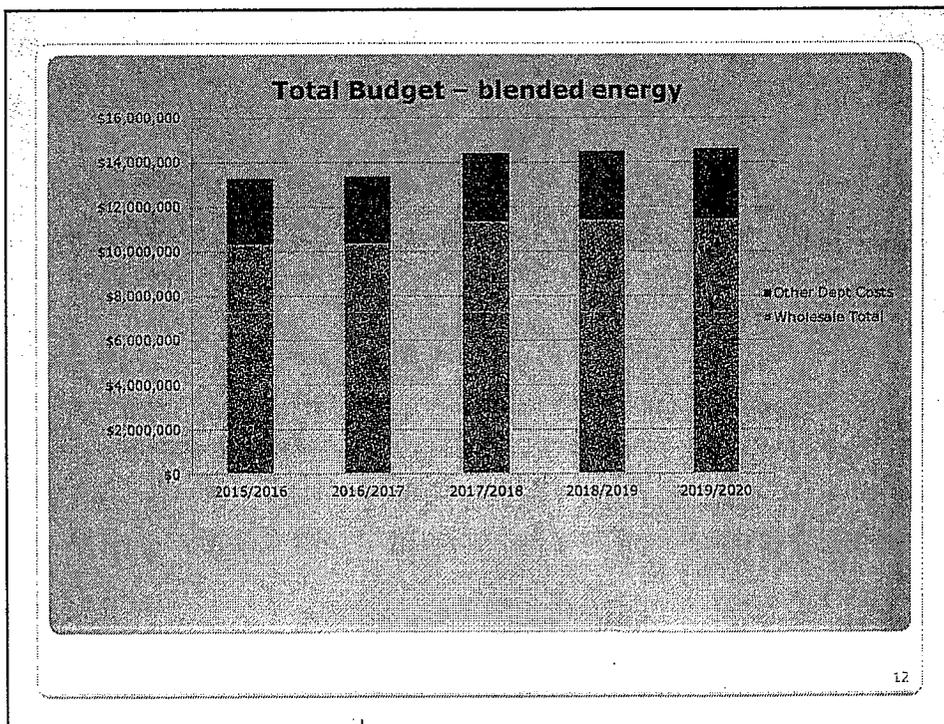
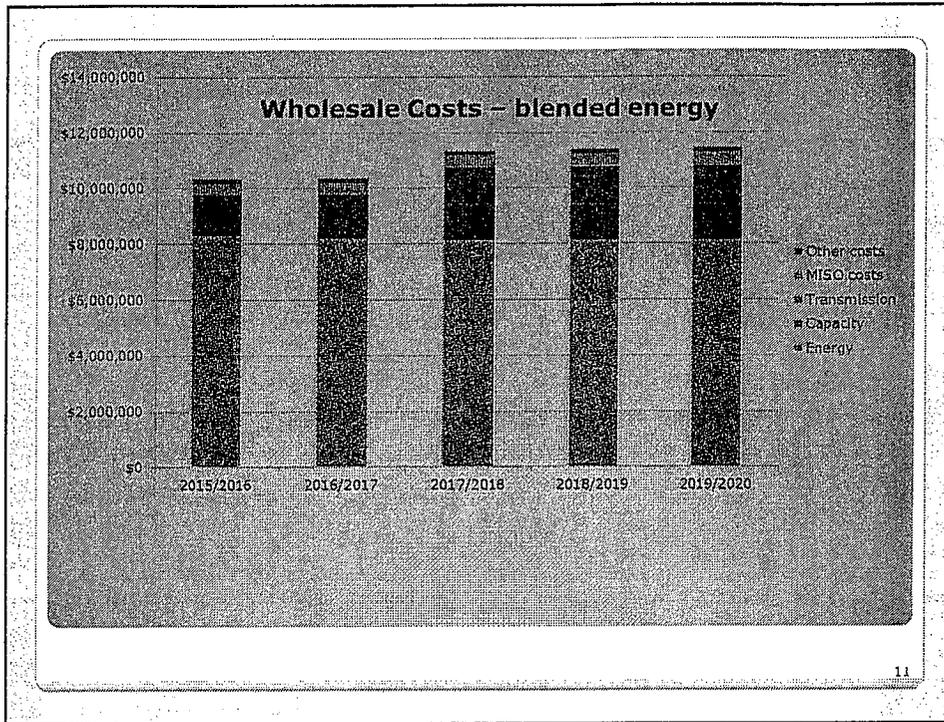


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### 5 year projections, blended rate - Jan 2017 – May 2020 @ \$55.86

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Energy	\$8,308,050	\$8,202,805	\$8,127,630	\$8,127,630	\$8,127,630
Capacity	\$172,200	\$256,200	\$1,260,000	\$1,260,000	\$1,260,000
Transmission	\$1,285,000	\$1,310,700	\$1,336,914	\$1,363,652	\$1,390,925
MISO costs	\$400,000	\$420,000	\$441,000	\$463,050	\$486,203
Other costs	\$170,250	\$173,655	\$177,128	\$180,671	\$184,284
Wholesale Total	\$10,335,500	\$10,363,360	\$11,342,672	\$11,395,003	\$11,449,042
Other Dept Costs	\$2,935,214	\$2,993,918	\$3,053,797	\$3,114,873	\$3,177,170
<b>Total Budget</b>	<b>\$13,270,714</b>	<b>\$13,357,278</b>	<b>\$14,396,469</b>	<b>\$14,509,876</b>	<b>\$14,626,212</b>

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- Assumptions used
  - Energy 145,500 Mwh/yr, Capacity 35 MW/yr
  - 2% annual increase for most other costs
  - 5% annual increase for MISO costs
- Impacts to rates – yearly purchases

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
% Increase		-1.61%	8.02%	4.37%	2.46%

- Impact to rates – blended

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
% Increase		0.65%	7.78%	0.79%	0.80%

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- Energy Options
  - Do nothing – keep getting future prices
  - GLU Power Pool
    - Have a GLU rep at the July meeting
  - Extend the NextEra contract
- Capacity Options
  - Do nothing – keep getting prices
  - Buy all future capacity needs
  - Buy some future capacity needs

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## Blended Costs of energy

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Energy	\$8,308,050	\$8,173,099	\$8,076,705	\$8,076,705	\$8,076,705
Capacity	\$172,200	\$256,200	\$1,260,000	\$1,260,000	\$1,260,000
Transmission	\$1,285,000	\$1,310,700	\$1,336,914	\$1,363,652	\$1,390,925
MISO costs	\$400,000	\$420,000	\$441,000	\$463,050	\$486,203
Other costs	\$170,250	\$173,655	\$177,128	\$180,671	\$184,284
Wholesale Total	\$10,335,500	\$10,333,654	\$11,291,747	\$11,344,078	\$11,398,117
Other Dept Costs	\$2,935,214	\$2,993,918	\$3,053,797	\$3,114,873	\$3,177,170
Total Budget	\$13,270,714	\$13,327,572	\$14,345,544	\$14,458,951	\$14,575,287
	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
% increase		0.43%	7.64%	0.79%	0.80%

## Annual cost of energy

	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Energy	\$8,308,050	\$7,902,348	\$7,834,933	\$8,267,068	\$8,462,280
Capacity	\$172,200	\$256,200	\$1,260,000	\$1,260,000	\$1,260,000
Transmission	\$1,285,000	\$1,310,700	\$1,336,914	\$1,363,652	\$1,390,925
MISO costs	\$400,000	\$420,000	\$441,000	\$463,050	\$486,203
Other costs	\$170,250	\$173,655	\$177,128	\$180,671	\$184,284
Wholesale Total	\$10,335,500	\$10,062,903	\$11,049,975	\$11,534,440	\$11,783,692
Other Dept Costs	\$2,935,214	\$2,993,918	\$3,053,797	\$3,114,873	\$3,177,170
Total Budget	\$13,270,714	\$13,056,821	\$14,103,771	\$14,649,313	\$14,960,862
	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
% increase		-1.61%	8.02%	3.87%	2.13%

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, June 18, 2015**

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

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ronald J. Beauchamp, Ralph B. Blasier, and Michael R. Sattem.

Absent: None

Also Present: City Manager James V. O'Toole, City Department Heads, media, and members of the public.

Pastor Erik Heskin of Bethany Lutheran Church, gave the invocation and led Council in the Pledge of Allegiance.

Beauchamp moved, Blasier seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting Minutes from June 4, 2015, as submitted.

**ADJUSTMENTS TO THE AGENDA**

Blasier moved, Sattem seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**AWARD PRESENTATION**

Mayor Tall, on behalf of the citizens' of Escanaba, presented a Meritorious Service Award and Retirement Proclamation to Nancy L. Young upon her retirement, and declared June 30, 2015, as Nancy L. Young Day in the City of Escanaba.

**BRIEF PUBLIC COMMENT**

Bonifas Art Center Executive Director Pasqua Warstler, and Events Coordinator Brook McGinnes briefly reviewed and encouraged Council support for the Catherine Bonifas Fine Art Center from the Michigan Council for the Arts and Cultural Affairs Mini Grant for the 2016 Music Mondays Summer Concert Series.

**PUBLIC HEARINGS**

**Approval – Ordinance No. 1163 – Appropriations Ordinance Amendment.**

A public hearing was conducted on an amendment to the current Appropriations Ordinance for the fiscal year ending June 30, 2015. An amendment was needed to balance out over and under expenditures within various departmental budgets for the 2014-15 fiscal year. This action was mandated by State law and adjusts budget accounts to help ensure that no individual line items were overrun.

City Controller Melissa Becotte provided a brief overview of the adjustments in the proposed Appropriations Amendment which include the General and Special Funds of the City.

This being a public hearing, Mayor Tall asked if there was any public comment.

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

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

**Resolved,** That Ordinance No. 1163, the Appropriations Ordinance Amendment, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter."

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

Ayes: Beauchamp, Sattem, Blasier, Baribeau, Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED.**

Herewith Ordinance No. 1163 adopted by title:

**"AN ORDINANCE TO AMEND ORDINANCE NO. 1146, ENTITLED AN ORDINANCE TO MAKE APPROPRIATIONS AND CORRESPONDING REVENUES FOR THE YEAR ENDED JUNE 30, 2015."**

Full text in Ordinance Record "K".

## **NEW BUSINESS**

### **Approval – Resolution of Support – Bonifas Art Center – Music Mondays Summer Concerts.**

The Bonifas Art Center sought Council approval of a resolution supporting their grant application to the Michigan Council for Arts and Cultural Affairs seeking funds for the "Music Mondays" Summer Concert Series. If approved, the City of Escanaba will serve as the Administrator for the funds. Administration recommended approval.

**NB-1** Resolved, By Council Member Blasier, seconded by Council Member Baribeau;

**RESOLUTION - SUPPORTING THE GRANT APPLICATION TO THE MICHIGAN COUNCIL FOR ARTS AND CULTURAL AFFAIRS SEEKING MATCHING FUNDS FOR THE "MUSIC MONDAYS" SUMMER CONCERT SERIES.**

**WHEREAS**, the City Council of the City of Escanaba, Michigan, does hereby find as follows:

**WHEREAS**, the City desires to support the cultural lives of area residents through opportunities to be exposed to new art and music;

**WHEREAS**, the City has an excellent partner in the Bonifas Arts Center to successfully organize and promote community events, and educate the public through music appreciation programming;

**WHEREAS**, the City will administer the grant funds, if awarded, as set forth in the application;

**WHEREAS**, the City has a policy detailing equal opportunity provisions for job applicants and public accommodations and agrees to conform to the Assurances and Guidelines set forth in the application;

**NOW, THEREFORE, BE IT HEREBY PROCLAIMED** by the City Council of the City of Escanaba, Michigan, that the grant application should be made to the Michigan Council for Arts and Cultural Affairs for the August 3, 2015 deadline.

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

Ayes: Blasier, Baribeau, Sattlem, Beauchamp, Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED.**

**Approval – Street Paving Contract – Department of Public Works.**

On May 27, 2015, four (4) invitations to submit bids for street paving were sent out to area vendors. Additionally, a request for bid was advertised in the Escanaba Daily Press. A bid opening was conducted on June 10, 2015, with one (1) received. After review and consideration by the Administration, the bid from Payne and Dolan, of Gladstone, Michigan, was being recommended for approval at the stated unit prices. This item was included in the upcoming fiscal year budget.

City Engineering Assistant Terry Flower provided a brief overview of the proposed street 2015/16 projects.

**NB-2** Sattlem moved, Blasier seconded, to approve a street paving bid from Payne and Dolan, of Gladstone, Michigan, at the stated unit prices.

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

Ayes: Sattem, Blasier, Baribeau, Beauchamp, Tall  
Nays: None

**MOTION CARRIED.**

**Update – Sale of the Power Plant – City Manager’s Office.**

Manager O’Toole updated the Council and public on the latest developments related to the Escanaba generating facility. Manager O’Toole stated the Escanaba Power Plant was shut down and secured, and Administration continued to negotiate with Sterling Energy for the Power Plant Sale.

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

**BOARD, COMMISSION, AND COMMITTEE REPORTS**

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

**GENERAL PUBLIC COMMENT – None**

**ANNOUNCEMENTS**

- Manager O’Toole stated Delta and Marquette Counties held their first Superior Trade Zone meeting in Rock on Tuesday June 16th;
- There was a fundraiser for the Animal Shelter Friday June 26<sup>th</sup> at Ernies Pub.

Hearing no further public comment, the Council adjourned at 7:25 p.m.

Respectfully submitted

Robert S. Richards, CMC  
City Clerk

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

NB#1  
CC 7/2/15



June 22, 2015

**MEMORANDUM**

**TO:** City Council,  
James V. O'Toole, City Manager

**FROM:** Robert S. Richards, CMC *RSR*  
City Clerk

**SUBJECT:** July 2, 2015, Agenda Item – Freedom of Information Act (FOIA)

The Michigan Legislature made many significant changes to FOIA at the end of 2014. Municipalities face new regulations on how they charge for responses to FOIA. These changes go into effect on July 1, 2015. Under the new law, municipalities must adopt "Procedures and Guidelines" describing fees associated with FOIA requests. Municipalities cannot charge fees unless they have "Procedures and Guidelines" in place. Administration requests Council to adopt the attached new required changes.

**CITY OF ESCANABA**  
**WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES**

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

**1. How do I submit a FOIA request to the City of Escanaba?**

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City of Escanaba must be submitted in writing.
- A request must sufficiently describe a public record so as to enable the City to find it.
- No specific form to submit a written request is required. However a FOIA Request form for your use and convenience is available on the City's website at [www.escanaba.org](http://www.escanaba.org)
- Written requests can be made in person by delivery to any City office in person or by mail.
- Requests can also be made by facsimile by calling 906-789-7349 for non-Public Safety records and 906-786-5911 for Public Safety records.
- A request may also be submitted by e-mail. To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to [clerk@escanaba.org](mailto:clerk@escanaba.org)

*Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.*

**2. What kind of response can I expect to my request?**

- Within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:
  - Grant the request.
  - Issue a written notice denying the request.
  - Grant the request in part and issue a written notice denying in part the request.
  - Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
  - Issue a written notice indicating that the public record requested is available at no charge on the City's website.
- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

**3. What are the City's fee deposit requirements?**

- If the City has made a good faith calculation that the total fee for processing the request exceeds \$50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit it will provide you a non-binding best efforts estimate of how long it will take to process the request following receipt by the City of your deposit.

- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:
  - the final fee for the prior written request is not more than 105% of the estimated fee;
  - the public records made available contained the information sought in the prior written request and remain in the City's possession;
  - the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
  - 90 days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
  - the individual is unable to show proof of prior payment to the City; and
  - the City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The City will not require the 100% estimated fee deposit if any of the following apply:
  - the person making the request is able to show proof of prior payment in full to the City;
  - the City is subsequently paid in full for all applicable prior written requests; or
  - 365 days have passed since the person made the request for which full payment was not remitted to the City.

#### **4. How does the City calculate FOIA processing fees?**

- A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.
- The Michigan FOIA statute permits the City to assess and collect a fee for six designated processing components. The City may charge for the following costs associated with processing a request:
  - Labor costs associated with searching for, locating and examining a requested public record.
  - Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
  - The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
  - The cost of duplication or publication, not including labor, of paper copies of public records.
  - Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
  - The cost to mail or send a public record to a requestor.

- Labor Costs
  - All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
  - Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
  - Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
  
- Non-paper Physical Media
  - The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
  - This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
  
- Paper Copies
  - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets will reflect the actual cost of reproduction.
  - The City may provide records using double-sided printing, if cost-saving and available.
  
- Mailing Costs
  - The cost to mail public records will use a reasonably economical and justified means.
  - The City may charge for the least expensive form of postal delivery confirmation.
  - No cost will be made for expedited shipping or insurance unless requested.

**5. How do I qualify for a reduction of the processing fees?**

- The City may waive or reduce the fee associated with a request when City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.
  
- The City will waive the first \$20.00 of the processing fee for a request if you submit an affidavit stating that you are:
  - indigent and receiving specific public assistance; or
  - if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.
  
- You are not eligible to receive the \$20.00 waiver if you:
  - have previously received discounted copies of public records from the City twice during the calendar year; or
  - are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

- An affidavit is sworn statement. For your convenience the City has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.
- The City will waive the fee for a nonprofit organization which meets all of the following conditions:
  - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;
  - the request is made directly on behalf of the organization or its clients;
  - the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
  - the request is accompanied by documentation of the organization's designation by the State

**6. How may I challenge the denial of a public record or an excessive fee?**

○ Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may file an appeal of the denial with the Office of the City Manager. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the City Manager will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the City Manager, you may file a civil action in Escanaba County Circuit Court within 180 days after the City's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1000.00.

○ Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Office of the City Manager. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the City Manager will respond in writing by:

- waiving the fee;
- reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

Within 45 days after receiving notice of the City Manager's determination of the processing fee appeal, you may commence a civil action in Escanaba County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.

**Need more details or information?**

This is only a summary of the City of Escanaba's FOIA Procedures and Guidelines. For more details and information, copies of the City of Escanaba's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website, [www.Escanaba.org](http://www.Escanaba.org).

DRAFT

## CITY OF ESCANABA

### FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

#### **Preamble: Statement of Principles**

It is the policy of the City of Escanaba that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The City of Escanaba's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of Escanaba acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Escanaba acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Escanaba will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Escanaba's policy is to disclose public records consistent with and in compliance with State law.

#### **Section 1: General Policies**

The City Council acting pursuant to the authority at MCL 15.236 designates the City Clerk as the FOIA Coordinator. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and

junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator, or designee, shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

## **Section 2: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of Escanaba must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of ESCANABA on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The City will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the City will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the Manager or seek judicial review in the Escanaba County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

#### **Section 4: Fee Deposits**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the City, the requestor will be asked to provide a deposit not exceeding on-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the City's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the City; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the City;
- the City is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

### **Section 5: Calculation of Fees**

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual request received by the City. *See Bloch v Davison Community Schools, 2011 Mich App Lexis 771, 2011 WL 1564645*
- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.

- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down\*.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.<sup>†</sup>
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

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\* The cost of labor directly associated with duplication, publication or transferring records to nonpaper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.

<sup>†</sup> If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage, which is currently \$8.15.

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
  - The late response was willful and intentional.
  - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information
  - The written request included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form

## Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice<sup>†</sup> during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;
- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

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<sup>†</sup> The FOIA requires that an indigent requestor is entitled to at least two discounted fees in a calendar year; however a public body may permit more than two if it so chooses to do so.

## **Section 7: Appeal of a Denial of a Public Record**

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the Office of the Manager. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the Manager will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Manager may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

Whether or not a requestor submitted an appeal of a denial to the Manager, he or she may file a civil action in Escanaba County Circuit Court within 180 days after the City's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000. Court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.

## **Section 8: Appeal of an Excessive FOIA Processing Fee**

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the Office of the Manager. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Manager will respond in writing by:

- waive the fee;
- reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Manager that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Manager that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Manager will respond to the written appeal.

Within 45 days after receiving notice of the Manager's determination of a fee appeal, a requestor may commence a civil action in ESCANABA County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

## **Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

## **Section 9: Appendix of City of Escanaba FOIA Forms**

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form
- Certification Form



FREEDOM OF INFORMATION ACT
REQUEST FOR INFORMATION

DATE

I, the undersigned, hereby request a copy of the following Escanaba City Record(s): (Describe in detail, including date of incident and file number if available)

Multiple horizontal lines for describing the records requested.

I understand that the City may charge me for this service. I hereby agree to pay the charge for the furnishing of this information in advance of receiving same.

Applicant

Address

Phone Number

Email

\*\*\*\*\* separator line \*\*\*\*\*

FOR CITY USE ONLY

Request reviewed and approved/denied: Date Dept. Head

Person to whom documents were supplied if different from above:

Description of documentation supplied:

Date documents supplied: Fee: Collected:

Account Number: 101-000-627-000

## FOIA Fee Itemization Form

(Effective July 1, 2015)

Component	Cost Calculations	Total
<b>1. Labor Costs – Search, Location, and Examination of Records</b>	<p>Enter the hourly wage of lowest paid employee capable of performing the search, location and examination  <div style="text-align: right;">\$ _____ per hour</div></p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)  <div style="text-align: right;">_____ %</div></p> <p>Multiply the hourly wage times the fringe benefit multiplier  <div style="text-align: right;">\$ _____ x 1. _____ = \$ _____</div></p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)  <div style="text-align: right;">\$ _____ + _____ = \$ _____</div></p> <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment  <div style="text-align: right;">\$ _____ / 4 = \$ _____</div></p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate  <div style="text-align: right;">_____ x \$ _____ = \$ _____</div></p>	<p>\$ _____</p>
<b>2. Employee Labor Costs – Redaction*</b>	<p>If performed by the public body's employee:</p> <p>Enter the hourly wage of lowest paid employee capable of performing the redaction  <div style="text-align: right;">\$ _____ per hour</div></p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)  <div style="text-align: right;">_____ %</div></p> <p>Multiply the hourly wage times the fringe benefit multiplier</p>	

	$\text{\$ } \underline{\hspace{2cm}} \times 1. \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{2cm}}$ <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> $\text{\$ } \underline{\hspace{2cm}} + \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$ <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{2cm}} / 4 = \text{\$ } \underline{\hspace{2cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{2cm}} \times \text{\$ } \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$	$\text{\$ } \underline{\hspace{2cm}}$
<b>2. Contracted Labor Costs – Redaction*</b>	<p>If performed by Contracted Labor (Only permitted if the public body does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted:</p> <p>_____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. <math>\text{\\$}8.15 \times 6 = \text{\\$}48.90</math>)</p> $\text{\$ } \underline{\hspace{2cm}} \text{ per hour}$ <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{2cm}} / 4 = \text{\$ } \underline{\hspace{2cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{2cm}} \times \text{\$ } \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$	$\text{\$ } \underline{\hspace{2cm}}$
<b>3. Non-Paper Physical Media</b>	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives <math>\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}</math></p> <p>Computer Discs <math>\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}</math></p> <p>Other Media <math>\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}</math></p>	$\text{\$ } \underline{\hspace{2cm}}$
<b>4. Paper Copies</b>	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 1/2" x 11")</p> $\text{number of sheets } \underline{\hspace{2cm}} \times \text{\$}0. \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{2cm}}$ <p>Legal paper (8 1/2" x 14")</p>	

	<p style="text-align: right;">number of sheets ___ x \$0. ___ = \$ ___</p> <p>Actual cost of other types of paper:</p> <p>Type of Paper: _____  number of sheets ___ x \$ ___ = \$ ___</p> <p>Type of Paper: _____  number of sheets ___ x \$ ___ = \$ ___</p> <p>(NOTE: Must print double-sided if available and costs less.)</p>	<p style="text-align: right;">\$ _____</p>
<p><b>5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media</b></p>	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media</p> <p style="text-align: right;">\$ _____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)</p> <p style="text-align: right;">_____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier</p> <p style="text-align: right;">\$ _____ x 1. _____ = \$ _____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> <p style="text-align: right;">\$ _____ + _____ = \$ _____</p> <p>Divide the resulting hourly wage by _____ to determine the charge per _____ ( ) minute increment</p> <p style="text-align: right;">\$ _____ / 4 = \$ _____</p> <p>(NOTE: May use any time increment for this category)</p>	
	<p>Number of ___ minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> <p style="text-align: right;">x \$ _____ = \$ _____</p>	<p style="text-align: right;">\$ _____</p>
<p><b>6. Mailing</b></p>	<p>Actual cost of mailing records in a reasonable and economical manner:</p> <p style="text-align: right;">Cost of mailing: \$ _____</p> <p>Cost of least expensive form of postal delivery confirmation:</p> <p style="text-align: right;">\$ _____</p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:</p> <p style="text-align: right;">\$ _____</p>	<p style="text-align: right;">\$ _____</p>

	<b>Subtotal</b>	\$ _____
<b>Waivers and Reductions</b>	<p>Subtract any Fee Waiver or Reduction: \$20.00 for indigency or nonprofit organization as further described in the Public Body's procedures and guidelines.</p> <p>Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$ _____</p> <p>The reduction amount due to the late response of the Public Body. 5% of fee x _____ days late = _____ % reduction (maximum reduction is 50%)</p>	-\$ _____
<b>Deposit</b>	Subtract any good-faith deposit received: \$ _____	-\$ _____
	<b>Total Due</b>	\$ _____

ESCANABA PUBLIC SAFETY DEPARTMENT

Freedom of Information Fee Itemization

The cost to provide your FOIA request is calculated in 15 minute increments with partial time rounded down.

Actual time spent to search, locate, redact and print and proofread requested materials: \_\_\_\_\_

Cost incurred per 15 minute increment: \$ \_\_\_\_\_

Number of 15 minute increments: 1 2 3 4 5 6 \_\_\_\_\_ X \_\_\_\_\_

Cost for paper/copying: \$.\_\_\_\_\_ per sheet x \_\_\_\_\_ sheets \$ \_\_\_\_\_

Total researching cost: \$ \_\_\_\_\_

Time spent proofreading materials: \_\_\_\_\_

Cost per 15 minute increment: \$ \_\_\_\_\_

Number of 15 minute increments: 1 2 3 4 5 6 \_\_\_\_\_ x \_\_\_\_\_

Total proofreading cost: \$ \_\_\_\_\_

Cost for locating/reproducing photos/materials to disk:

Time spent locating and editing: \_\_\_\_\_

Cost per 15 minute increment (photos/documents): \$ \_\_\_\_\_

911 recordings: \$ \_\_\_\_\_

Number of 15 minute increments: 1 2 3 4 5 6 \_\_\_\_\_ x \_\_\_\_\_

Actual cost of CD: \$.\_\_\_\_\_ each x \_\_\_\_\_ number of CD's \$ \_\_\_\_\_

Total cost of reproduction: \$ \_\_\_\_\_

Cost to mail: \$ \_\_\_\_\_

Fee waiver: Indigence/Non-Profit Organization (first \$20 free, 2/yr) (-- \$ 20.00)

Deposit: (-- \$ \_\_\_\_\_)

TOTAL COST INCURRED: \$ \_\_\_\_\_

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

Re: \_\_\_\_\_

Dear Sir/Ms:

Please be advised we received and reviewed your recent FOIA request.

Your request is

- granted in part with respect to the documents requested.
- denied

Your request has been denied or information has been redacted from the record for the following reasons(s) under MCL.243(b):

- (I) Specific investigative techniques and/or information that would "interfere with law enforcement proceedings"; this includes cases which are pending court proceedings. Please contact the appropriate prosecuting agency:
  - Delta County Prosecutor at (906) 786-5115 or at their office at the Delta County Courthouse, 310 Ludington Street (Escanaba), second floor.
  - City Attorney's Office at (906) 786-6009, located at 517 Ludington Street (Escanaba).
- (II) Specific information that would "deprive a person's right to a fair trial".
- (III) The address, phone number, social security number of subjects listed in the report are redacted to protect their identity and location as an "unwarranted invasion of privacy".
- (IV) Names of witnesses, informants/complainants, and/or victims which would "disclose a confidential source".
- Any and all information protected under HIPA.
- Victim is a juvenile and case involves Criminal Sexual Contact charges.
- Record does not exist.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You have the right to submit a written appeal to the FOIA Coordinator for the City of Escanaba, Mr. Bob Richards, that specifically states the word "appeal" and identifies the reason or reasons for reversal of this denial.

In addition, you may also seek judicial review of this denial pursuant to MCL 15.240. If you seek judicial review and the Court determines that the public records are not exempt from disclosure, you have the right to receive attorney fees and damages in an amount not to exceed \$1000.

\*\* The City of Escanaba policy/procedure for response to FOIA requests is available on line at [Escanaba.org](http://Escanaba.org); Contact; under Quick Links, Escanaba A to Z; Freedom of Information.

## Introduction

Michigan governmental entities will face significant new regulations on how they charge for responses to Freedom of Information Act (FOIA) requests beginning July 1, 2015. New legislation approved during the Legislature's final session day of 2014 will require public bodies to establish specific written procedures and guidelines for FOIA requests, including a separate written summary informing the public on how to submit FOIA requests, how to understand the public body's responses to FOIA requests, deposit requirements, fee calculations, and avenues for challenging and appealing the public body's denial of a request. The governor signed the new legislation into law as PA 563 of 2014.

## Summary of the legislation

If a public body administers or maintains an internet presence, then it is required to post the procedures, guidelines, and written summary on its website. Public bodies are also required to provide free copies of the procedures, guidelines, and written summary upon request, and are required to include a free copy, or a website link to the policies, in all FOIA responses.

The procedures and guidelines must include a standard form to detail the itemization of any fee the public body estimates or charges under FOIA. The itemization must clearly list and explain each of the six fee components authorized under the new legislation, which include several categories of labor costs associated with producing public records, whether in paper or electronic form; costs of non-paper physical media used to produce public records (e.g., DVDs, flash drives); copying costs; and postage costs.

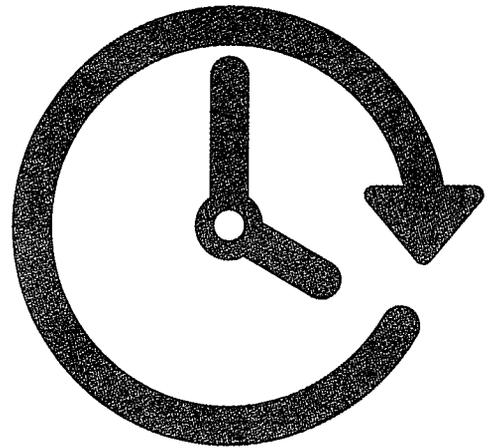
The new legislation also:

- Allows FOIA requestors to require that the public body provide records on non-paper physical media, by e-mail, or otherwise electronically provided, so long as the public body has the technological capability necessary to provide records on the particular media stipulated by the requestor.
- Prohibits a public body from charging more than \$0.10/sheet for paper copies of public records (excluding labor costs).
- Allows a public body to charge for contractual services required to perform separation and deletion of exempt information from nonexempt information if the public body does not employ a person capable of such activity. The public body may not charge more than an amount equal to six times the state minimum hourly wage rate for such contractual services.
- Allows a public body to add up to 50 percent to the applicable labor charge to cover or partially cover the cost of employee fringe benefits.
- Allows a public body to inform a FOIA requestor that requested information is available on the public body's website, in lieu of providing the public records, so long as the records were available on the website at the time of the request.
- Requires public employees receiving verbal requests for information that is available on the public body's website, to inform the requestor of the pertinent website address.
- Requires a public body, in certain circumstances, to reduce its charges for labor costs in responding to FOIA request if the public body has not responded in a timely manner.

- Allows a public body, under certain circumstances, to require a 100 percent deposit before processing a request from individuals who have not paid the public body for public records acquired pursuant to previous FOIA requests.
- Increases mandatory punitive damages to be awarded to a plaintiff from \$500 to \$1,000, and mandates a new \$1,000 civil fine which a court must award if it finds the public body has arbitrarily and capriciously violated the Act.
- Requires a court to impose an additional civil fine of \$2,500 to \$7,500 if it finds the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith.

This publication was provided by the law firm of Miller Canfield.

# Significant Changes to Michigan's **FOIA** Take Effect July 1st



By Steven D. Mann and Cassie J. Hare

**B**eginning July 1, 2015, significant new regulations take effect governing how public bodies administer and respond to requests under the Freedom of Information Act, PA 442 of 1976 (FOIA). The changes are the result of HB 4001, which was approved during the Legislature's final session day of 2014, and was signed into law by Governor Snyder on January 11, 2015 as PA 563 of 2014 (the "Amendment"). Changes of this magnitude are unprecedented in FOIA's nearly 40-year history. The changes impact nearly every area of FOIA, including local policies required for FOIA administration, fees categories and methods of calculation, good-faith deposits and fee waivers, records available on the public body's website, and the appeal process, including significant new penalties.

## **Newly Required Procedures and Guidelines**

The most significant change made by the Amendment is that public bodies will be required to establish specific written Procedures and Guidelines (the "Procedures and Guidelines") to implement FOIA, including a standard fee itemization form, and separate written public summary. If the public body directly or indirectly administers or maintains an internet presence, the public body is required to post the Procedures and Guidelines on its website. A public body that has not established these Procedures and Guidelines or has not created a written public summary is prohibited from charging a fee for

providing public records. Free copies of the Procedures and Guidelines must be available at the public office.

The written public summary must be written "in a manner so as to be easily understood by the general public," and must inform the public "how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal."

All responses to written FOIA requests must include the standard fee itemization form detailing any fee charged to the requestor. The form must clearly list and explain detailed and allowable charges for each of FOIA's new six fee components. In addition, a free copy of the Procedures and Guidelines must be included with the response, or a link to the website where the Procedures and Guidelines are available.

## **New Fee Categories and Methods for Calculations**

Another significant area of change is the categories and manner in which fees may be charged. The Amendment establishes six fee components for which a public body may charge, generally requires labor costs to be charged in increments of fifteen minutes, permits a multiplier to be applied to cover part of all of the cost of fringe benefits, and in certain cases allows charges for contracted labor costs. The fee components are as follows:

## 1 Labor Costs—Search, Location, and Examination of Public Records<sup>1</sup>

The labor costs that are directly associated with the necessary search, location, and examination of public records are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. The labor cost must be charged in increments of 15 minutes or more, and all partial time must be rounded down.

## 2 Labor Costs—Redaction

Similar to search, location, and examination, the labor costs associated with separating and redacting exempt information from non-exempt information are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe include a completed detailed itemization of the good-benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. The labor cost must be charged in increments of 15 minutes or more, and all partial time and must be rounded down.

If the public body does not employ a person capable of redacting the records, as determined by the FOIA Coordinator, the public body may charge for contracted labor. The fee itemization form must list the name of the person or firm contracted and the hourly rate charged for contracted labor may not exceed six times the state minimum wage. The contracted labor costs must be charged in increments of 15 minutes or more, and all partial time must be rounded down.

In either case, if the public body knows or has reason to know that the requested public record has previously been redacted and the redacted version is still the public body's possession, in the public body may not charge for labor redaction costs.

## 3 Cost of Non-Paper Physical Media

The Amendment allows a requestor to require the public body to provide the records on non-paper physical media, by email, or otherwise by electronic means. The public body may charge the actual and most reasonably economical cost for the non-paper physical media used to provide the public records.

Non-paper physical media includes flash drives, computer discs, computer tapes, or other digital or similar media. These provisions do not apply if the public body does not have the technological capability necessary to provide records in the requested electronic format.

## 4 Cost of Paper Copies

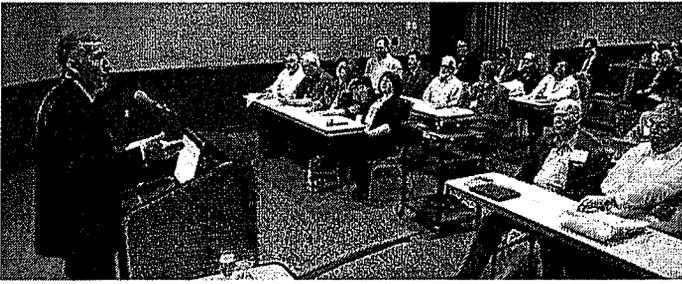
The public body may charge for the actual incremental cost of duplicating the public records, not including labor costs. The fee charged for letter (8 1/2" x 11") or legal (8 1/2" x 14") size paper may not exceed \$0.10 per sheet. The public body may charge the actual cost for other types of paper. The fee itemization form must include both the cost per sheet and the number of sheets for each type of paper. The Amendment requires the public body to use the most economical means available when providing paper copies, including using double-sided printing if available and less costly.

## 5 Labor Costs of Duplication and Publication

The public body is also authorized to charge for labor costs directly associated with the duplication and publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the internet or other electronic means stipulated by the requestor. The labor costs are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. Unlike the other labor costs, labor costs for duplication and publication may be charged in any time increment chosen by the public body and identified in its Procedures and Guidelines. All partial time is still required to be rounded down.

## 6 Cost of Mailing

The final component for which a public body may charge is the actual cost of mailing the documents in a "reasonably economical and justifiable manner." The public body may only charge for expedited shipping or insurance if it is stipulated by the requesting person. The public body is allowed to charge for the least expensive form of postal delivery confirmation.



Steven Mann explaining FOIA changes to Capital Conference attendees

**Fee Waivers.** Currently FOIA requires a public body to waive the first \$20 of a charge for completing a FOIA request for public records from a person who is indigent if that individual provides an affidavit stating the individual is receiving public assistance or stating facts showing inability to pay due to indigence. The Amendment places additional restrictions on this waiver requiring the affidavit to state that the individual is indigent and receiving specific public assistance, or stating facts showing the inability to pay due to indigency. The Amendment also limits an indigent individual to receiving two discounts from the public body per calendar year. The Amendments also provide that an indigent individual is ineligible for a discount if the request is made in conjunction with other parties who are offering remuneration.

The Amendment also provides for a fee waiver category for certain requests made by nonprofit organizations designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors. There are no annual limits for fee waivers for these nonprofit organizations.

The fee itemization form must note any waivers granted for the request.

**Deposits.** A public body may continue to require a good faith deposit, not to exceed one-half the total estimated fee, for request where the fee estimate exceeds \$50. However, requests for deposits are now required to faith fee calculation and a "non-binding" "best efforts estimate" of the time frame it will take the public body to provide the public records to the requestor once the deposit is received.

The Amendment now permits a public body to require a 100 percent deposit from an individual who has not paid a previous FOIA fee in full to the public body before the public body begins another search for that individual. This 100 percent deposit may only be required if (i) the prior final fee was not more than 105 percent of the estimated fee, (ii) the public records made available contained the information being sought in the prior request and are still in the public body's possession, (iii) the public records were made available to the individual within the time frame originally estimated by the public body, (iv) 90 days have passed since written notifica-

tion that the records were available, (v) the individual is unable to show proof of prior payment, and (vi) the public body calculates a detailed itemization of the current request. The 100 percent deposit requirement is inapplicable if the individual is able to show proof of prior payment in full, the public body is subsequently paid in full, or 365 days have passed since the individual made the written request for which payment was not made.

All deposits required under FOIA are considered a fee and must be noted on the itemization form. Categorizing deposits as fees allows individuals certain appeal rights under FOIA with respect to the deposit.

### **Mandated Fee Reduction for Late Responses**

The Amendment mandates that if public bodies fail to respond to requests in a timely manner as required by FOIA, they must reduce the charges for labor costs by 5 percent for each day the public body exceeded the time limit, up to a maximum of 50 percent reduction. This reduction must be noted in the fee itemization form. There are certain exceptions for requests which are not clearly identifiable as a FOIA request.

### **Information Available on the Public Body's Website**

If a written request is made for documents or information that is available on the public body's website, the public body may not charge for those documents. Instead, if the public body's FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the website, he or she must notify the requesting person in the public body's written response and must include, to the degree practicable, the specific webpage address. The fee itemization form must separate the information that is available on the website from that which is not and shall inform the requestor that there will be an additional charge to receive copies of public records that are available on its website. If the requestor then requests the information be provided, the public body may charge for providing the records and may use a fringe benefit multiplier that exceeds the standard 50 percent multiplier (not to exceed the actual fringe benefit cost).

### **Verbal Requests**

While a requestor is required to provide a written request in order to receive a response from a public body regarding FOIA, the Amendment provides limited ability to make a verbal request. Under the Amendment, if a verbal request is made and the public body believes the information requested is available on the public body's website, the public body employee is required, to the best of his or her knowledge, to inform the requestor about the website location of the requested information.

## Requests Caught in Spam or Junk Folder

The Amendments provide new provisions for electronic requests delivered to the public body's spam or junk mail folder. Electronic requests are generally considered "received" one business day after the transmission is made. However, the Amendments provide that if a request is delivered to the public body's spam or junk mail folder, the request is not considered "received" until one day after the public body first becomes aware of the request. The public body is required to keep a log detailing when requests are delivered to the spam or junk mail folder and when the public body becomes aware of them. The public body's Procedures and Guidelines should require the FOIA coordinator to periodically check the spam and junk folders at reasonable intervals.

## Appeals

Once the Amendments take effect, requestors will have two appeal options under FOIA. The first is for the appeal of a denial of a request for public records. The second is a new appeal process for an appeal of an excessive fee. FOIA did not previously provide a method for appealing an excessive fee and fee appeals therefore were generally brought as small claim or circuit court actions.

For both denial of records and excessive fee appeals, the Amendments require any civil action to be filed in the Circuit Court for the county in which the public record or an office of the public body is located, or if the claim is against a state public body, then in the Court of Claims. This is a welcomed change from the prior provisions which allowed requestors to file in jurisdictions where they lived or worked, and sometimes resulted in public bodies facing claims in courts geographically unrelated to their offices or the location of the public records.

The Amendments allow the public body to require (in its Procedures and Guidelines) that appeals for excessive fees must first be brought before the head of the public body, or in the absence of such a provision, directly in the Circuit Court.

**"Changes of this magnitude are unprecedented in FOIA's nearly 40-year history. The changes impact nearly every area of FOIA, including local policies required for FOIA administration, fees categories and methods of calculation, good-faith deposits and fee waivers, records available on the public body's website, and the appeal process, including significant new penalties."**

Fee appeals to the head of the public body must be responded to within 10 business days with a determination to either waive, reduce, or uphold the fee. In certain circumstances, the head of the public body may extend the response time by an additional 10 business days. Fee appeal determinations must be in writing and must indicate the specific basis that supports the fee amount, along with other certifications required by the Amendments. After a determination is made by the head of the public body, or if there is a failure to respond to the appeal, the requestor may file an action in the Circuit Court. If the court reduces the fee by 50 percent or more, it may award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the public body arbitrarily and capriciously violated FOIA by charging an excessive fee, the court shall order a civil fine of \$500, to be deposited in the general fund of the state treasury, and the court may also award actual or compensatory damages, and punitive damages of \$500 to the requestor. If the court finds the public body willfully and intentionally failed to comply with FOIA, or acted in bad faith, it must impose a civil fine in the amount of \$2,500-\$7,500 for each occurrence, such fine also being deposited in the general fund of the state treasury.

Visit [mml.org](http://mml.org) for the League's One Pager *Plus* Fact Sheet with sample summary, policy and guidelines, and fee itemization form.



## 2015 LEAGUE EVENT

### CHANGES TO THE **FREEDOM OF INFORMATION ACT**

The Public Act 563 of 2014 (HB 4001) makes significant changes to the Freedom of Information Act (FOIA). The changes concern fees charged by public bodies for public records, civil actions brought under the Act, and the receipt and denial of requests; and would add provisions allowing a person to appeal to a public body or bring a civil action if he or she believed that a fee was unreasonable. This is a must-attend webinar for all local government attorneys, clerks and other officials.

**WEBINAR • MAY 21, 2015**

Visit [www.mml.org/events/calendar](http://www.mml.org/events/calendar) to register.

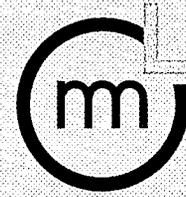
## Conclusion

The Amendment brings a wide range of changes to Michigan's FOIA. This article discussed the most significant changes to FOIA as a result of PA 563, but is not intended as a complete or comprehensive guide to all changes. Public bodies are encouraged to consult with their own legal counsel regarding the new requirements and policy implementations. Public bodies must adopt FOIA Procedures and Guidelines before July 1, 2015. 

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1. Labor costs for search, location, examination and redaction (fee categories 1 and 2) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. The Court of Appeals has interpreted this provision to require that the determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. The key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. *Bloch v Davison Cmty Schools*, (Mich.App. Apr. 26, 2011), 2011 WL 1564645.



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**FREEDOM OF INFORMATION ACT**  
**Act 442 of 1976**

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

*The People of the State of Michigan enact:*

**15.231 Short title; public policy.**

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 1997, Act 6, Imd. Eff. May 16, 1997.

Popular name: Act 442

Popular name: FOIA

**15.232 Definitions.**

Sec. 2. As used in this act:

(a) "Field name" means the label or identification of an element of a computer data base that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

(f) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored

information or data, or a field name if disclosure of that field name does not violate a software license.

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

**15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.**

Sec. 3. (1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

\*\*\*\*\*15.234 THIS SECTION IS AMENDED EFFECTIVE JULY 1, 2015: See 15.234.amended\*\*\*\*\*

**15.234 Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.**

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public

record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

**Constitutionality:** The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. *Kestenbaum v Michigan State University*, 414 Mich 510; 417 NW2d 1102 (1982).

Popular name: Act 442

Popular name: FOIA

\*\*\*\*\* 15.234.amended THIS AMENDED SECTION IS EFFECTIVE JULY 1, 2015 \*\*\*\*\*

**15.234.amended Fee; limitation on total fee; labor costs; establishment of procedures and guidelines; creation of written public summary; detailed itemization; availability of information on website; notification to requester; deposit; failure to respond in timely manner; increased estimated fee deposit; deposit as fee.**

Sec. 4. (1) A public body may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4). Subject to subsections (2), (3), (4), (5), and (9), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:

(a) That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

(b) That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in section 14. For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14 as determined by the public body's FOIA coordinator on a case-by-case basis, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the

same manner as employee labor costs when calculating charges under this subdivision if it clearly notes the name of the contracted person or firm on the detailed itemization described under subsection (4). Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. A public body shall not charge for labor directly associated with redaction under section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body's possession.

(c) For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if a public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.

(d) For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

(e) The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision may be estimated and charged in time increments of the public body's choosing; however, all partial time increments shall be rounded down.

(f) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The public body shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

(2) When calculating labor costs under subsection (1)(a), (b), or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed itemization described in subsection (4). A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:

(a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

(i) The individual has previously received discounted copies of public records under this subsection from the same public body twice during that calendar year.

(ii) ~~The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.~~ A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside

parties in exchange for payment or other remuneration.

(b) A nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

(i) Is made directly on behalf of the organization or its clients.

(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.

(iii) Is accompanied by documentation of its designation by the state, if requested by the public body.

(3) A fee as described in subsection (1) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

(4) A public body shall establish procedures and guidelines to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary shall be written in a manner so as to be easily understood by the general public. If the public body directly or indirectly administers or maintains an official internet presence, it shall post and maintain the procedures and guidelines and its written public summary on its website. A public body shall make the procedures and guidelines publicly available by providing free copies of the procedures and guidelines and its written public summary both in the public body's response to a written request and upon request by visitors at the public body's office. A public body that posts and maintains procedures and guidelines and its written public summary on its website may include the website link to the documents in lieu of providing paper copies in its response to a written request. A public body's procedures and guidelines shall include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this act. The detailed itemization shall clearly list and explain the allowable charges for each of the 6 fee components listed under subsection (1) that compose the total fee used for estimating or charging purposes. Other public bodies may use a form created by the department of technology, management, and budget or create a form of their own that complies with this subsection. A public body that has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as required in this subsection is not relieved of its duty to comply with any requirement of this act and shall not require deposits or charge fees otherwise permitted under this act until it is in compliance with this subsection. Notwithstanding this subsection and despite any law to the contrary, a public body's procedures and guidelines under this act are not exempt public records under section 13.

(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available. On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

(6) A public body may provide requested information available in public records without receipt of a written request.

(7) If a verbal request for information is for information that a public body believes is available on the public body's website, the public employee shall, where practicable and to the best of the public employee's knowledge, inform the requestor about the public body's pertinent website address.

~~(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds~~

\$50.00, based on a good-faith calculation of the total fee described in subsection (4). Subject to subsection (10), the deposit shall not exceed 1/2 of the total estimated fee, and a public body's request for a deposit shall include a detailed itemization as required under subsection (4). The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

(9) If a public body does not respond to a written request in a timely manner as required under section 5(2), the public body shall do the following:

(a) Reduce the charges for labor costs otherwise permitted under this section by 5% for each day the public body exceeds the time permitted under section 5(2) for a response to the request, with a maximum 50% reduction, if either of the following applies:

(i) The late response was willful and intentional.

(ii) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

(b) If a charge reduction is required under subdivision (a), fully note the charge reduction on the detailed itemization described under subsection (4).

(10) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(11) Subject to subsection (12), after a public body has granted and fulfilled a written request from an individual under this act, if the public body has not been paid in full the total amount under subsection (1) for the copies of public records that the public body made available to the individual as a result of that written request, the public body may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

(a) The final fee for the prior written request was not more than 105% of the estimated fee.

(b) The public records made available contained the information being sought in the prior written request and are still in the public body's possession.

(c) The public records were made available to the individual, subject to payment, within the time frame estimate described under subsection (7).

(d) Ninety days have passed since the public body notified the individual in writing that the public records were available for pickup or mailing.

(e) The individual is unable to show proof of prior payment to the public body.

(f) The public body calculates a detailed itemization, as required under subsection (4), that is the basis for the current written request's increased estimated fee deposit.

(12) A public body shall no longer require an increased estimated fee deposit from an individual as described under subsection (11) if any of the following apply:

(a) The individual is able to show proof of prior payment in full to the public body.

(b) The public body is subsequently paid in full for the applicable prior written request.

(c) Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the public body.

(13) A deposit required by a public body under this act is a fee.

**History:** 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

**Constitutionality:** The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. *Kestenbaum v Michigan State University*, 414 Mich 510; 417 NW2d 1102 (1982).

~~Popular name: Act 442~~

Popular name: FOIA

\*\*\*\*\* 15.235 THIS SECTION IS AMENDED EFFECTIVE JULY 1, 2015: See 15.235.amended \*\*\*\*\*

**15.235 Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.**

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

- (a) Granting the request.
- (b) Issuing a written notice to the requesting person denying the request.
- (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) if the circuit court has done both of the following:

- (a) Determined that the public body has not complied with subsection (2).
  - (b) Ordered the public body to disclose or provide copies of all or a portion of the public record.
- (4) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:
- (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
  - (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

- (i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
- (ii) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the circuit court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

- (a) Grant the request.
- (b) Issue a written notice to the requesting person denying the request.
- (c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

- (a) Appeal the denial to the head of the public body pursuant to section 10.
- (b) Commence an action in circuit court, pursuant to section 10.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Compiler's note: In subsection (3), the reference to "section 10(8)" evidently should be a reference to "section 10(7)."

Popular name: Act 442

Popular name: FOIA

**15.235.amended Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.**

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made. However, if a written request is sent by electronic mail and delivered to the public body's spam or junk-mail folder, the request is not received until 1 day after the public body first becomes aware of the written request. The public body shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the public body first becomes aware of that request.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

- (a) Granting the request.
- (b) Issuing a written notice to the requesting person denying the request.
- (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request if either of the following applies:

- (a) The failure was willful and intentional.
- (b) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to this act, on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page.

(4) In a civil action to compel a public body's disclosure of a public record under section 10, the court shall assess damages against the public body pursuant to section 10(7) if the court has done both of the following:

- (a) Determined that the public body has not complied with subsection (2).
  - (b) Ordered the public body to disclose or provide copies of all or a portion of the public record.
- (5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:
- (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

- (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

- (c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

- (i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
- (ii) Seek judicial review of the denial under section 10.

- (e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(6) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(7) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

- (a) Grant the request.
- (b) Issue a written notice to the requesting person denying the request.

- (c) Grant the request in part and issue a written notice to the requesting person denying the request in part.
- (8) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:
- (a) Appeal the denial to the head of the public body pursuant to section 10.
  - (b) Commence a civil action, pursuant to section 10.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

Popular name: Act 442

Popular name: FOIA

### 15.236 FOIA coordinator.

Sec. 6. (1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) An FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

\*\*\*\*\* 15.240 THIS SECTION IS AMENDED EFFECTIVE JULY 1, 2015: See 15.240.amended \*\*\*\*\*

### 15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall

determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

**History:** 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

**Popular name:** Act 442

**Popular name:** FOIA

\*\*\*\*\* 15.240.amended THIS AMENDED SECTION IS EFFECTIVE JULY 1, 2015 \*\*\*\*\*

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

**History:** 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

**Popular name:** Act 442

**Popular name:** FOIA

\*\*\*\*\* 15.240a.added THIS ADDED SECTION IS EFFECTIVE JULY 1, 2015 \*\*\*\*\*

**15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.**

Sec. 10a. (1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following

submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

**History:** Add. 2014, Act 563, Eff. July 1, 2015.

**Popular name:** Act 442

**Popular name:** FOIA

\*\*\*\*\* 15.240b.added THIS ADDED SECTION IS EFFECTIVE JULY 1, 2015 \*\*\*\*\*

#### **15.240b.added Failure to comply with act; civil fine.**

Sec. 10b. If the court determines, in an action commenced under this act, that a public body willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence. In determining the amount of the civil fine, the court shall consider the budget of the public body and whether the public body has previously been assessed penalties for violations of this act. The civil fine shall be deposited in the general fund of the state treasury.

**History:** Add. 2014, Act 563, Eff. July 1, 2015.

**Popular name:** Act 442

**Popular name:** FOIA

\*\*\*\*\* 15.241 THIS SECTION IS AMENDED EFFECTIVE JULY 1, 2015: See 15.241.amended \*\*\*\*\*

#### **15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.**

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

- (a) Final orders or decisions in contested cases and the records on which they were made.
- (b) Promulgated rules.
- (c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

\*\*\*\*\* 15.241.amended THIS AMENDED SECTION IS EFFECTIVE JULY 1, 2015 \*\*\*\*\*

**15.241.amended Matters required to be published and made available by state agency; form of publications; effect of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.**

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements that implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person is not required to resort to, and shall not be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records that are exempt from disclosure under section 13.

(5) A person may commence an action in the court of claims to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The court of claims has exclusive jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rule" mean "agency", "contested case", and "rule" as those terms are defined in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 2014, Act 563, Eff. July 1, 2015.

Popular name: Act 442

Popular name: FOIA

**15.243 Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.**

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(j) Appraisals of real property to be acquired by the public body until either of the following occurs:

(i) An agreement is entered into.

(ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.

(m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of history, arts, and libraries may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article

VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the social security number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the

public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

**History:** 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2000, Act 88, Imd. Eff. May 1, 2000;—Am. 2001, Act 74, Imd. Eff. July 24, 2001;—Am. 2002, Act 130, Eff. May 1, 2002;—Am. 2002, Act 437, Eff. Aug. 1, 2002;—Am. 2006, Act 482, Imd. Eff. Dec. 22, 2006.

**Compiler's note:** For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

**Popular name:** Act 442

**Popular name:** FOIA

#### **15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.**

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

**History:** Add. 1979, Act 130, Imd. Eff. Oct. 26, 1979.

**Popular name:** Act 442

**Popular name:** FOIA

#### **15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.**

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

**History:** 1976, Act 442, Eff. Apr. 13, 1977.

**Popular name:** Act 442

**Popular name:** FOIA

#### **15.245 Repeal of MCL 24.221, 24.222, and 24.223.**

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

**History:** 1976, Act 442, Eff. Apr. 13, 1977.

**Popular name:** Act 442

**Popular name:** FOIA

**15.246 Effective date.**

Sec. 16. This act shall take effect 90 days after being signed by the governor.

**History:** 1976, Act 442, Eff. Apr. 13, 1977.

**Popular name:** Act 442

**Popular name:** FOIA

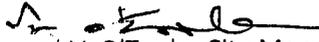
James V. O'Toole  
City Manager



NB# 2  
cc 7/2/15  
410 Ludington Street  
Escanaba, Michigan 49829  
Phone (906)786-0240

MEMORANDUM

June 24, 2015

TO: Escanaba City Council  
FROM:   
James V. O'Toole, City Manager  
SUBJ: Next Michigan Superior Trade Zone Board Appointments

In accordance with the Next Michigan Superior Trade Zone Inter-local Agreement, Article VI. Corporation Board, Section 6.0., a primary member to the Corporation Board needs to be appointed by each local unit of government for terms established by each unit of government but not exceeding three (3) years. I am seeking Council approval to appoint Escanaba City Assessor Daina Norden as the primary representative for the City of Escanaba. Mrs. Norden's expertise in assessing matters and her experience with the various tax abatement programs in Michigan, such as those allowed under the Next Michigan Development Act, make her uniquely qualified to be on the newly formed Corporation Board. Mrs. Norden's organizational skills and tenacity are strong attributes and would be a great benefit when representing the interest of the City of Escanaba.

Additionally, the City of Escanaba is entitled to appoint one (1) alternate to the Corporation Board to serve in a permanent member's place and stead if the permanent member is absent from a Corporation Board meeting. This appointment would not exceed three (3) years. I am asking that the City Council appoint me to that position in that I was one of four steering committee members responsible for the development of the program to include the need to get a legislative change made in creating an additional zone in Michigan as well as working with the various units of government in bringing everyone together for the creation of a regional economic development tool. I was also a responsible party in creating the articles of incorporation for the newly formed Next Michigan Superior Trade Zone. My background in City management, code enforcement, planning, zoning, grant administration and such would be an asset to the newly formed corporation.

In the event our primary and alternate cannot complete the term of the appointment for any reason, the City Council would then be asked to name another appointee to finish out the balance of the unexpired term.

Once the Next Michigan Superior Trade Zone Corporation appoints all board members, that board shall then be responsible for the selection of an Executive Committee as defined in Article VII of the Next Michigan Superior Trade Zone Inter-local Agreement. That agreement is attached to this memorandum.

Mission Statement:

Enhancing the enjoyment and livability of our community by providing quality municipal services to our citizens.

INTERLOCAL AGREEMENT

Creating the

SUPERIOR TRADE ZONE NEXT MICHIGAN  
DEVELOPMENT CORPORATION

This is an Interlocal Agreement ("Agreement") entered into by and among the signatory public agencies (each a "Public Agency" or collectively the "Public Agencies") pursuant to, and as defined in, the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of Michigan, 1967 (Ex Sess), as amended, MCL 124.501 to 124.512 ("Act 7"). The Public Agencies signing this Agreement may also be referred to as "Parties", or each a "Party". Certain of the Parties are Counties and these Parties may be referred to as "County Parties" or each a "County Party". "Local Government Party" shall mean any Party organized as a Michigan city, village, charter township, or township.

#### RECITALS

A. The Parties are cognizant of the need in this state, and within their respective jurisdictions, for programs to encourage economic development and investment, job creation and job retention, and ancillary growth.

B. Act 7 permits a Public Agency to exercise jointly with any other Public Agency any power, privilege or authority that such Public Agencies share in common and which each might exercise separately. All Parties to this Agreement are Public Agencies under Act 7.

C. As one means for addressing the above-recited need, the Parties desire to enter into this Agreement, pursuant to Act 7, to jointly create and exercise the economic development powers shared by the Parties. The County Parties and the Local Government Parties desire to create a Next Michigan Development Corporation pursuant to the Next Michigan Development Act, Public Act 275 of 2010, MCL 125.2951-125.2959, as the same may be amended from time to time, (the "Next Michigan Development Act").

D. Each Party has the power, privilege and authority to perform various economic development activities and administrative functions supportive of economic development activities and to enter into this Agreement.

E. Each Party, pursuant to resolution of its governing body, is authorized to execute and deliver this Agreement.

IN WITNESS WHEREOF, the Parties covenant and agree as follows:

#### ARTICLE I DEFINITIONS

The following words and expressions, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive and/or either within or without quotation marks shall be defined and interpreted as follows:

Section 1.01 "Act 7" means the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of Michigan, 1967 (Ex Sess), MCL 124.501 to 124.512.

Section 1.02 "Act 24" means 1995 PA 24, Michigan Economic Growth Authority, as amended, MCL 207.801 - 207.810.

Section 1.03 "Act 198" means Act No. 198 of the Public Acts of Michigan, 1974, as amended, MCL 207.551 to 207.572

- Section 1.04 "Act 206" means the General Property Tax Act, Act No. 206 of the Public Acts of Michigan, 1893, as amended, MCL 211.1 to 211.157.
- Section 1.05 "Act 275" means 2010 PA 275, the Next Michigan Development Act, MCL 125.2951 - 125.2959.
- Section 1.06 "Act 281" means the Local Development Financing Act, Act No. 281 of the Public Acts of Michigan, 1986, as amended, MCL 125.2151 to 125.2174.
- Section 1.07 "Act 376" means the Renaissance Zone Act, Act No. 376 of the Public Acts of Michigan, 1996, as amended, MCL 125.2681 to 125.2696.
- Section 1.08 "Act 381" means the Brownfield Redevelopment Financing Act, Act No. 381 of the Public Acts of Michigan 1996, as amended, MCL 125.2651 to 125.2672.
- Section 1.09 "Agreement" means this Interlocal Agreement, dated as of the Effective Date.
- Section 1.10 "Authority District" means that term as defined in Act 281 (MCL 125.2152 (f)).
- Section 1.11 "Budget Act" means the Uniform Budgeting and Accounting Act, Act No. 2 of the Public Acts of Michigan, 1968, as amended, MCL 141.421 to 141.440a.
- Section 1.12 "Corporation" means the Superior Trade Zone Next Michigan Development Corporation created by this Agreement, a separate legal entity and public body corporate and politic, to administer the economic development objectives and purposes set forth herein.
- Section 1.13 "Corporation Board" means the board of the Corporation created by Article VI of this Agreement.
- Section 1.14 "Effective Date" means the later of the dates on which a fully executed copy of this Agreement is (1) first filed with the Michigan Department of State, Office of the Great Seal, and (2) filed with the County Clerk of each county in which a Party to this Agreement is located.
- Section 1.15 "Eligible Next Michigan Business" means that term as defined in Act 24 (MCL 207.803 (h)).
- Section 1.16 "Executive Committee" means any executive committee of the Corporation Board created pursuant to Article VII of this Agreement.
- Section 1.17 "Fiscal Year" means the fiscal year of the Corporation, which shall begin on January 1 of each year and end on December 31 of each year, or such other fiscal year as may be determined from time to time by the Corporation.
- Section 1.18 "FOIA" or "Freedom of Information Act" means the Freedom of Information Act, Act No. 442 of the Public Acts of Michigan, 1976, as amended, MCL 15.231 to 15.246.
- Section 1.19 "Superior Trade Zone Master Design Plan" or "Master Design Plan" means an overall design plan adopted by the Corporation pursuant to Section 5.03 of this Agreement for the coordinated and orderly development of the Zone, including the recommended designation of,

and uses by, the Local Government Parties under relevant provisions of the Zoning Act. The Master Design Plan shall have no binding force or effect within or upon any portion of the territory of any Local Government Party except to the extent expressly approved by resolution of the governing body of the Local Government Party.

Section 1.20 "Local Government Party" shall mean any Party organized as a Michigan city, village, charter township, or township.

Section 1.21 "Michigan Strategic Fund" or "MSF" means the Michigan Strategic Fund created pursuant to Act No. 270 of the Public Act of Michigan, 1984, as amended, MCL 125.2001 to 125.2094.

Section 1.22 "Next Michigan Development Area" or "NMDA" means that term as defined in Act 281 (MCL 125.2152 (aa))

Section 1.23 "Next Michigan Renaissance Zone" or "Renaissance Zone" means that term as defined in Act 376 (MCL 125.2683 (f))

Section 1.24 "OMA" or "Open Meetings Act" means the Open Meetings Act, Act No. 267 of the Public Acts of Michigan, 1976, as amended, MCL 15.261 to 15.275.

Section 1.25 "Participation Agreement" means an agreement as described in Article IX of this Agreement.

Section 1.26 "Party" or "Parties" means, either individually or collectively as applicable, each County Party and Local Government Party.

Section 1.27 "Permit" shall mean a permit, license or approval required to be granted by a Local Government Party as a condition of the operation of a business.

Section 1.28 "Person" means any individual, authority, profit or non-profit corporation, partnership, limited liability company, university, joint venture, trust, association, chamber of commerce, travel and visitors center, Public Agency, or other legal entity.

Section 1.29 "Public Agency" means that term as defined in Act 7.

Section 1.30 "Site Plan" means that term as defined in the Zoning Act.

Section 1.31 "State" means the State of Michigan.

Section 1.32 "Territory of the Corporation" shall mean the area within the collective boundaries of the Local Government Parties.

Section 1.33 "Tax Increment Revenues" means that term as defined in Act 281, provided that notwithstanding other provisions of State law, for purposes of the Corporation, "Tax Increment Revenues" shall not include any of the following: The amount of ad valorem property taxes or specific taxes captured by a downtown development authority under Act No. 197, Public Acts of Michigan, 1975, as amended, MCL 125.1651 to 125.1681, a tax increment financing authority under Act No. 450, Public Acts of Michigan, 1980, as amended, MCL 125.1801 to 125.1830, a local development finance authority under Act 281, or a brownfield redevelopment authority under Act 381, if those taxes were being captured by such other authorities on the Effective Date.

Section 1.34 "TIF Plan" means a Development Plan and a tax increment financing plan as those terms are defined and used in Act 281.

Section 1.35 "Zone" means a Next Michigan Renaissance Zone.

Section 1.36 "Zoning Act" means the Michigan Zoning Enabling Act, Act No. 110 of the Public Acts of Michigan, 2006, as amended, MCL 125.3101 to 125.3702.

**ARTICLE II**  
**CREATION OF THE SUPERIOR TRADE ZONE NEXT MICHIGAN DEVELOPMENT CORPORATION**

Section 2.01 **Creation and Legal Status of the Superior Trade Zone Next Michigan Development Corporation.** There is hereby created a separate legal entity and public body corporate and politic to be known as the "Superior Trade Zone Next Michigan Development Corporation" for the purpose of administering and executing this Agreement. The Corporation shall have all of the powers granted in this Agreement.

Section 2.02 **Geographic Boundaries.** The boundaries of the Corporation within which it may exercise its powers shall be the area within the collective political boundaries of the Local Government Parties. The Corporation shall have no extraterritorial power or authority.

Section 2.03 **Principal Office.** The initial principal office of the Corporation is 234 W. Baraga Ave, Marquette, Michigan, or such other location as may be determined from time to time by the Corporation Board.

Section 2.04 **Title to Corporation Assets.** Except as otherwise provided under the terms of a transfer of programs and/or funding from a Party or Person to the Corporation, the Corporation shall have exclusive title to all its property, and no Party or Person shall have an ownership interest in Corporation property.

Section 2.05 **Tax-exempt Status.** The Parties intend and declare the activities of the Corporation to be governmental functions carried out by an instrumentality or political subdivision of government as described in Section 115 of the Internal Revenue Code of 1986, 26 USC 115, or any corresponding provisions of any future tax code. The Parties also intend and declare the activities of the Corporation to be governmental functions carried out by a political subdivision of this State, exempt to the extent provided under Michigan law from taxation by this State, including, but not limited to, the business taxes and ad valorem property taxes under Act 206, and exempt to the extent provided under Michigan law from all governmental assessments and fees otherwise applicable to private entities.

Section 2.06 **Compliance with Law.** The Corporation shall comply with all federal and state laws, rules, regulations, and orders applicable to this Agreement, including duties and obligations that may from time to time be transferred to the Corporation from each of the respective Parties or to which the Corporation shall be subject by direction of the Parties.

Section 2.07 **Independent Contractor.** The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to each other shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right or benefit arising out of any

employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

**Section 2.08 No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement does not, and is not intended to, create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right to be indemnified (i.e., contractually, legally, equitably, or by implication) and/or any right to be subrogated to any Party's rights in this Agreement, and/or any other right of any kind, in favor of any Person.

**Section 2.09 Ethics; Conflicts of Interest.** Members of the Corporate Board and Executive Committee and the officers, appointees and employees of the Corporation shall be considered "public servants" as defined in, and shall be subject to, Act No. 317, Public Acts of Michigan, 1968, as amended, MCL 15.321 to 15.330, and shall be considered "public officers" or "employees," as applicable, as defined in, and shall be subject to, Act No. 196, Public Acts of Michigan, 1973, as amended, MCL 15.341 to 15.348.

**Section 2.10 Limitation of Liability.** To the extent that a Party has transferred any administrative obligation or responsibility imposed upon it by law to the Corporation, and to the extent that such Party has provided funding as may be required by agreement with the Corporation, actual and timely performance by the Corporation shall be deemed satisfaction of the Party's obligation or responsibility. In such cases, the transferring Party shall not be responsible in any way for performance of the transferred obligation or responsibility. An agreement respecting transfers of administrative obligations or responsibilities may limit the liability of a transferring Party for any actions taken by the Corporation. The Corporation may insure against any such potential loss/damage.

**Section 2.11 Assumed Name.** The Corporation shall have the power and authority to operate under an assumed name as determined from time to time by the Corporation Board.

### ARTICLE III PURPOSE

**Section 3.01 Purpose.** The purpose of the Corporation shall be to take advantage of the provisions of State law, now or hereafter enacted, enabling the creation and implementation of economic development activities generally and of Next Michigan Development Corporations as defined in Act 275, in particular, and to attract Eligible Next Michigan Businesses, as that term is defined in Act 24, and shall include the exercise of power granted by State law and the joint exercise of shared powers, privileges or authority of the Parties to perform successful, effective and efficient economic development programs and functions throughout the Territory of the Corporation. Shared powers shall include the coordination of complementary local programs and functions of the Parties. The Parties desire and intend that the Corporation created hereby be fully empowered and authorized to exercise such powers as granted by Act 7 and Act 275, as the same may be amended from time to time, and any laws subsequently enacted allowing for the creation and governance of investment zones for economic development purposes, of whatsoever nature, to the fullest extent authorized by law without further amendment to this Agreement, subject only to the limitations set forth in this Agreement.

**ARTICLE IV  
GENERAL POWERS OF CORPORATION**

**Section 4.01 Powers Granted Under Act 7.** In carrying out its purposes, the Corporation may perform, or perform with any Person, as applicable, any power, privilege, or Corporation that the Parties share in common and that each might exercise separately to the fullest extent permitted by Act 7 and in accordance with relevant law, except as expressly otherwise provided in this Agreement. The Corporation shall not have the power to bind a Party, unless otherwise agreed to by the Party. The enumeration of a power in this Agreement shall not be construed as a limitation upon the powers of the Corporation, and is in addition to any powers authorized by law. Among other things, the Corporation, in its own name, shall have the power to:

- (a) Make or enter into contracts;
- (b) Employ agencies or employees;
- (c) Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- (d) Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property.
- (e) Incur debts, liabilities, or obligations that, except as expressly authorized in writing by the Parties, do not constitute the debts, liabilities, or obligations of any of the Parties;
- (f) Cooperate with a Public Agency, an agency or instrumentality of the Public Agency, or another legal or administrative entity created by the Public Agency under Act 7;
- (g) Make loans from the proceeds of gifts, grants, assistance funds, or bequests in order to further its purposes;
- (h) Form other entities necessary to further the purposes of the Agreement; and
- (i) Sue and be sued.

**Section 4.02 Additional Powers Granted Under Act 7.** The Corporation shall also have the power to:

- (a) Employ, engage, compensate, transfer, or discharge necessary personnel, subject to the provisions of applicable civil service and merit systems and Act 7;
- (b) Fix and collect charges, rates, rents, fees, loan repayments, loan interest rates, or other charges on loans;
- (c) Promulgate necessary rules and provision for their enforcement by or with the assistance of the Parties to accomplish the purposes of this Agreement;
- (d) Accept gifts, grants, assistance funds, or bequests and use the same for the purposes of this Agreement. The Corporation may apply for and accept grants, loans, or contributions from any source. The Corporation may do anything within its power to secure the grants, loans, or other contributions;

(e) Make claims for federal or state aid payable to a Party on account of the execution of this Agreement;

(f) Respond for any liabilities that might be incurred through performance of the Agreement and insure against any such liability;

(g) Adjudicate disputes or disagreements, the effects of failure of the Parties to pay their shares of the costs and expenses, and the rights of the other Parties in such cases;

(h) Engage auditors to perform independent audits of the financial statements of the Corporation;

(i) Invest surplus funds or proceeds of grants, gifts, or bequests and adopt an investment policy in connection therewith;

(j) Employ legal, financial and technical experts, other officers, agents, or employees, and accept voluntary provision of such services and functions from donor individuals and entities;

(k) Study, develop, and prepare the reports or plans the Corporation considers necessary to further the purposes of this Agreement and to monitor and evaluate performance under this Agreement; and

(l) Indemnify, as permitted by law, and procure insurance indemnifying any members of the Corporation Board or officers or employees of the Corporation from personal loss or accountability from liability asserted by any Person for any acts or omissions of the Corporation.

**Section 4.03 Powers Under Other State Law.** In addition to all general powers granted under Act 7, the Corporation also shall have all of the powers granted to a Next Michigan Development Corporation created under Act 275 and under other applicable State law, now existing or as hereafter amended, including specifically by way of example and not limitation, Act 376, Act 281, Act 198 and Act 206, it being the intent of the Parties that the Corporation be empowered to accomplish its purposes to the full extent authorized by law.

Furthermore, by way of example and not limitation, the Corporation shall have all the powers granted under existing law, or subsequently enacted, allowing for the establishment of investment zones for economic development purposes throughout the state. Such powers shall include, but not be limited to, powers to establish the location, administration, management, requirements, and duration of such investment zones for economic development purposes.

**Section 4.04 Bonds or Notes: Limitations.** The Corporation shall not issue any type of bond in its own name or in any way indebted a Party except as provided below. The Corporation may borrow money and issue bonds or notes in its name for local public improvements or for economic development purposes provided that the Corporation shall not borrow money or issue bonds or notes for a sum that, together with the total outstanding bonded indebtedness of the Corporation, exceeds 2 mills of the taxable value of the taxable property within the Parties as determined under section 27a of The General Property Tax Act, 1893 PA 206, MCL 211.27a, unless otherwise authorized by Act 7. Bonds or notes issued by the Corporation are the debt of the Corporation and not of the Parties. Bonds or notes issued by the Corporation are for an

essential public and governmental purpose. Pursuant to Section 7(7) of Act 7, bonds or notes, together with the interest on the bonds or notes and income from the bonds or notes, are exempt from all taxes. Bonds or notes issued by the Corporation are subject to Act 34 as required by Section 7(8) of Act 7.

**Section 4.05 Tax Limitation.** The Corporation shall not levy any type of tax within the boundaries of any Party. Nothing contained in this Agreement, however, prevents the Parties from levying taxes in their own right and assigning the revenue from such taxes to the Corporation, to the extent permitted by law.

**Section 4.06 Limitation on Political Activities.** The Corporation shall not spend any public funds on political activities. This section is not intended to prohibit the Corporation from engaging in activities permitted under the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.

**Section 4.07 No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under Act 7 or other law.

#### ARTICLE V SPECIFIC POWERS OF CORPORATION; LIMITATIONS

**Section 5.01 Development Criteria.** The Corporation shall have the power to develop and establish development criteria and development-ready preconditions for the use of Parties in economic development assistance within the geographic territory of the Corporation.

**Section 5.02 Design Standards.** The Corporation shall promulgate specific design standards to be applied to property and developments, which receive economic development incentives under this Agreement and relevant law. The design standards shall be submitted to the Local Government Party / Parties and applicable County Party for approval prior to implementation.

To the extent reasonably practicable, in the promulgation of design standards the Corporation shall take into reasonable consideration the protective covenants and zoning ordinance provisions recommended by the Michigan Economic Development Corporation and the Michigan Economic Developers Association (or any similar successor organization(s)) for "Certified Business Parks" or any similar subsequently-recognized designation by Michigan economic developer associations or groups.

**Section 5.03 Superior Trade Zone Master Design Plan.** The Corporation, in collaboration with the Local Government Parties / applicable County Parties, shall have the power to promulgate a Master Design Plan for areas within the Territory of the Corporation. The Master Design Plan may include proposed land uses, and shall be submitted to the Local Government Party / Parties, and applicable County Party for approval prior to implementation.

**Section 5.04 Application Criteria and Review; Incentives.** The Corporation shall have the power to promulgate application materials; to seek and accept applications from prospective developers and businesses; to establish criteria for Eligible Next Michigan Businesses; to establish criteria and review applications for incentives from prospective developers and businesses; to make determinations in its sole discretion in respect of the

approval, in whole or in part, of such applications and of economic development incentives under relevant law (including, by way of example and not limitation, under Act 376, Act 281, Act 198 and Act 206), except as such discretion is expressly limited by this Agreement or law; to consult with the Michigan Strategic Fund in respect of applications and approvals; to monitor the performance of applicants; and to make recommendations in respect of applications to the Michigan Strategic Fund, a Local Government Party, County Party, or any other Person having subject matter jurisdiction.

**Section 5.05 Infrastructure Planning and Development.** The Corporation shall have the power to work with State and local government officials in the planning and development of infrastructure within the Territory of the Corporation.

**Section 5.06 Site Selection.** The Corporation shall have the power to assist prospective developers and businesses with selection of development sites within the Territory of the Corporation.

**Section 5.07 Marketing; Business Attraction.** The Corporation shall have the power to conduct marketing and business attraction efforts.

**Section 5.08 Real Estate Development.** The Corporation shall have the power to assist any Person in respect of the development of real estate for use by an eligible Next Michigan Business within the Territory of the Corporation.

**Section 5.09 Regulatory Assistance and Processing.** The Corporation shall have the power to provide assistance to prospective developers and businesses in respect of applying for and obtaining any necessary or advisable licenses, permits or approvals from federal, State and local government entities.

**Section 5.10 Streamlined Permitting Processes.** The Parties recognize the need for uniform and streamlined local permitting processes, and therefore the Corporation shall have the power to promulgate and recommend for approval to the Local Government Parties streamlined permitting and approval processes for projects within the Territory of the Corporation.

**Section 5.11 Local Government Assistance.** The Corporation shall have the power to provide assistance to Local Government Parties with the implementation and coordination of economic development programs within the Territory of the Corporation.

**Section 5.12 Designation of Next Michigan Renaissance Zones: Criteria: Local Government Party /County Party Disapproval.** Subject to the provisions of Act 376 and herein, the Corporation shall have the power to designate property within the Corporation's geographic territory as a Next Michigan Renaissance Zone (Zone). Prior to any such designation, the Corporation shall receive a resolution of approval from the Local Government Party and applicable County Party within which the Zone is proposed to be located. Within the first six months following the approval of this Corporation as a Next Michigan Development Corporation by the Michigan Strategic Fund (MSF), each initial Local Government Party shall be entitled to designate and request by resolution to the Corporation of one Zone within its territory for the Corporation's consideration provided: that such Zone shall be consistent with the Superior Trade Zone Master Design Plan; shall adhere to the permitting, zoning and design standards adopted by the Corporation; and each respective Local Government Party and applicable County Party shall assist with the preparation of the development plan in respect of such Zone within its territory. The Corporation shall consider the criteria set forth in section 7 of Act 376, MCL 125.2687, in

designating a Zone. The Corporation shall provide written notice of the proposed recommendation of property as a Zone to each Local Government Party and applicable County Party within 10 days of such recommendation. The Corporation shall have no power to designate, and shall not designate, a Zone if the Local Government Party or applicable County Party within which the proposed Zone is to be located delivers to the Corporation, either prior to any such recommendation by the Corporation or not later than 45 days after the Local Government Party / County Party has received written notice from the Corporation of the designation, a resolution from the Local Government Party's and applicable County Party's governing body stating its disapproval of a Zone recommendation; provided, however, that a Local Government Party / County Party may revoke or rescind its disapproval resolution at any time. If the disapproval resolution is revoked or rescinded, the Local Government Party thereafter may not disapprove of the Zone recommendation to which the original disapproval applied.

**Section 5.13 Designation of Next Michigan Development Areas ("NMDA"); Criteria: Conditions: Local Government Party/ County Party Disapproval.** The Corporation shall establish criteria for and may establish an Authority under Act 281 and an Authority District and designate a NMDA within the Authority District. Prior to the establishment of a NMDA, the Corporation shall receive a resolution of approval from any Local Government Party / County Party within which the NMDA is proposed to be located. Except as provided below, the Corporation shall not use Tax Increment Revenues derived from ad valorem taxes levied by a Local Government Party for any project or purpose outside the territory of the Local Government Party / County Party without the Local Government Party's / County Party written consent to the use. Notwithstanding the foregoing, the Corporation may use Tax Increment Revenues for the purpose of paying the Corporation's operating expenses to the extent permitted by law. This Agreement shall be deemed to be an agreement with taxing jurisdictions to share a portion of the captured assessed value or to distribute tax increment revenues among taxing jurisdictions as contemplated by section 12(5) of Act 281. The Corporation shall provide written notice of the proposed designation of an NMDA to each Local Government Party and applicable County Party within 10 days of such designation. The Corporation shall have no power to designate, and shall not designate, an NMDA if the Local Government Party within which the proposed NMDA is to be located delivers to the Corporation, either prior to any such designation by the Corporation or not later than 45 days after the Local Government Party and applicable County Party has received written notice from the Corporation of the designation, a resolution from the Local Government Party's governing body stating its disapproval of NMDA designation; provided, however, that a Local Government Party and applicable County Party may revoke or rescind its disapproval resolution at any time. If the disapproval resolution is revoked or rescinded, the Local Government Party / County Party thereafter may not disapprove of the NMDA designation to which the original disapproval applied.

**Section 5.14 Designation of Eligible Next Michigan Business: Local Government Party / County Party Disapproval.** Subject to the provisions of Act 376 and herein, the Corporation shall have the power to designate a business for certification as an Eligible Next Michigan Business. The Corporation shall provide written notice of the proposed designation of a business as an Eligible Next Michigan Business to each Local Government Party and applicable County Party within 10 days of such designation. The Corporation shall have no power to designate, and shall not designate, a business as an Eligible Next Michigan Business if the Local Government Party or applicable County Party within which the proposed Eligible Next Michigan Business proposes to locate or is located delivers to the Corporation, either prior to any such designation by the Corporation or not later than 45 days after the Local Government Party / applicable County Party has received written notice from the Corporation of the designation, a

resolution from the Local Government Party's and applicable County Party's governing body stating its disapproval of an Eligible Next Michigan Business designation; provided, however, that a Local Government Party / County Party may revoke or rescind its disapproval resolution at any time. If the disapproval resolution is revoked or rescinded, the Local Government Party / County Party thereafter may not disapprove of the Eligible Next Michigan Business designation to which the original disapproval applied. An eligible Next Michigan Business shall be designated only with respect to a particular proposed project for which tax incentives are sought. Each separate proposal submitted by a business for consideration for tax incentives shall require that the business be separately designated as a Eligible Next Michigan Business in respect of that specific proposal, notwithstanding any prior designation as an Eligible Next Michigan Business in respect of another proposal. For purposes of the foregoing limitation, "particular proposed project" shall mean a project as described by the business applicant with reasonable specificity satisfactory to the Corporation as to location, development components, operating characteristics, site improvements, capital investment, ancillary improvements, and other relevant information. No separate Eligible Next Michigan Business designation shall be required for any expansion of an existing project which does not exceed a capital investment of 100% of the capital investment previously made by the Eligible Next Michigan Business in respect of that existing project.

**Section 5.15 Approval of Act 198 Tax Abatements; Local Government Party and County Party Disapproval.** Subject to the provisions of Act 198 and herein, the Corporation shall have the power to establish plant rehabilitation districts and industrial development districts and exercise the other powers under Act 198. The Corporation shall provide written notice of the proposed approval of a plant rehabilitation district or an industrial development district to each Local Government Party within 10 days of such approval. The Corporation shall have no power to approve, and shall not approve, a plant rehabilitation district or an industrial development district if the Local Government Party and applicable County Party within which the proposed plant rehabilitation district or industrial development district is located delivers to the Corporation, either prior to any such approval by the Corporation or not later than 45 days after the Local Government Party and applicable County Party has received written notice from the Corporation of the approval, a resolution from the Local Government Party's / County Party's governing body stating its disapproval of the establishment of the district; provided, however, that a Local Government Party / County Party may revoke or rescind its disapproval resolution at any time. If the disapproval resolution is revoked or rescinded, the Local Government Party County Party thereafter may not disapprove of the district to which the original disapproval applied.

**Section 5.16 Approval of Personal Property Tax Exemptions; Local Government Party / County Party Disapproval.** Subject to the provisions of Act 206 and herein, the Corporation shall have the power to exempt new personal property under section 9f of Act 206. The Corporation shall provide written notice of the proposed resolution exempting such property to each Local Government Party and applicable County Party within 10 days of the approval of such resolution. The Corporation shall have no power to approve, and shall not approve, any exemption of new personal property under Act 206 if the Local Government Party and applicable County Party within which the new personal property proposed to be exempted is located delivers to the Corporation, either prior to any such approval by the Corporation or not later than 45 days after the Local Government Party / County Party has received written notice from the Corporation of the approval, a resolution from the Local Government Party's / County Party's governing body stating its disapproval of the exemption; provided, however, that a Local Government Party / County Party may revoke or rescind its disapproval resolution at any time. If the disapproval resolution is revoked or rescinded, the Local Government Party / County Party thereafter may not disapprove of the exemption to which the original disapproval applied.

**ARTICLE VI  
CORPORATION BOARD**

**Section 6.01 Corporation Board Composition.** The appointing authority of each Party shall appoint one (1) member of the Corporation Board. Members of the Corporation Board shall serve at the pleasure of the appointing Party for terms established by each Party, but not to exceed three (3) years.

(a) Each Party entitled to membership on the Corporation Board shall have the ability to appoint one (1) alternate to serve in a permanent member's place and stead if the permanent member is absent from a Corporation Board meeting. Appointment of the alternate shall be made by the appointing authority in writing.

(b) A vacancy on the Corporation Board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(c) A Corporation Board member may be removed by the appointing authority at will.

**Section 6.02 Meetings.** The Corporation Board shall meet at least annually at the place, date, and time the Corporation Board shall determine. Meetings shall comply with the Open Meetings Act. To the extent permissible by Michigan law, the conduct of, and the participation in, meetings may occur through electronic or telephonic means.

**Section 6.03 Quorum and Voting.** A majority of the Corporation Board then in office and present in person shall be required to constitute a quorum for the transaction of business, and a majority vote at a meeting at which a quorum is present shall be necessary for the transaction of business.

**Section 6.04 Corporation Board Powers and Responsibilities.** The Corporation Board shall do all of the following by a majority vote:

- (1) Adopt rules of procedure governing the Corporation Board and its actions and meetings. Initial rules of procedure shall be adopted within six (6) months of the first meeting of the Corporation Board. The rules of procedure shall contain provisions for, and a process governing, dispute resolution between and among the Parties.
- (2) Exercise all powers of the Corporation granted to the Corporation by this Agreement and under law.
- (3) Elect officers of the Corporation, which shall be a Chair, Vice-Chair, Secretary and Treasurer, and such other officers or assistant officers as the Corporation Board may determine. The offices of Secretary and Treasurer may be combined. Approve policies to govern and implement the day-to-day operations of the Corporation.
- (4) Provide a system of accounts and approve the Corporation budget.
- (5) Adopt an investment policy.
- (5) Cause to be conducted an annual independent audit of the Corporation in accordance with the Budget Act.
- (7) Take such other actions and steps as shall be necessary or advisable to accomplish the purposes of this Agreement.

**Section 6.05 Fiduciary Duty.** The members of the Corporation Board are under a fiduciary duty to conduct the activities and affairs of the Corporation in the best interests of the Corporation, including the safekeeping and use of all Corporation monies and assets for the benefit of the Corporation. The members of the Corporation Board shall discharge this duty in good faith, with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

**Section 6.06 Compensation.** The members of the Corporation Board shall receive no compensation for the performance of their duties, but each member may be reimbursed for such member's reasonable expenses in carrying out those duties, as reviewed and approved by Corporation Board. A member of the Corporation Board may engage in private or public employment, or in a profession or business.

**Section 6.07 Conflicts of Interest.** The Corporation Board may establish policies and procedures requiring periodic disclosure of any relationship that may give rise to a conflict of interest. The Corporation Board may require that a member who has a direct interest in any matter before the Corporation disclose the member's interest and any reasons reasonably known to the member of the Corporation Board why the transaction may not be in the best interest of the public before the Corporation Board takes any action with respect to the matter. The disclosure shall become part of the record of the Corporation's proceedings. The Corporation Board also may establish policies to preclude the opportunity for and the occurrence of transactions by the Corporation that would create a conflict of interest involving members of the Corporation Board, and employees of the Corporation. At a minimum, these policies to be established for the Corporation should include compliance by each member of the Corporation Board and employees of the Corporation who regularly exercise significant discretion over the award and management of Corporation projects with policies governing the following:

(a) Immediate disclosure of the existence and nature of any financial interest of an individual or immediate family member that would reasonably be expected to create a conflict of interest.

(b) Withdrawal by an employee or member from participation in or discussion or evaluation of any recommendation or decision involving a Corporation project that would reasonably be expected to create a conflict of interest for that employee or member.

## ARTICLE VII

### EXECUTIVE COMMITTEE AND CHIEF EXECUTIVE OFFICER

**Section 7.01 Executive Committee.** By a two-thirds vote of the voting members of the Corporation Board then serving in office, the Corporation may establish an Executive Committee with such powers, duties, rules, and procedures as may be set forth in the resolution of the Board establishing the Executive Committee. Until such time as an Executive Committee is established and empowered by the Corporation Board, the Corporation Board shall be the sole governing body of the Corporation.

**Section 7.02 Chief Executive Officer.** The Corporation Board may select and retain a Chief Executive Officer. The Chief Executive Officer shall administer the Corporation in accordance with the direction of the Corporation Board, the operating budget, the general policy guidelines established by the Corporation Board, other applicable governmental procedures and

policies, and this Agreement. The Chief Executive Officer shall be responsible for the day-to-day operation of the Corporation; the control, management and oversight of the Corporation's functions; and supervision of all Corporation employees. All terms and conditions of the Chief Executive Officer's employment, compensation, including length of service, shall be specified in a written contract between the Chief Executive Officer and the Corporation Board, provided that the Chief Executive Officer shall serve at the pleasure of the Corporation Board, and the Corporation Board may remove or discharge the Chief Executive Officer by a vote of not less than three-fifths (3/5) of its voting members then serving in office.

**ARTICLE VIII**  
**DURATION OF, WITHDRAWAL FROM, AND TERMINATION OF INTERLOCAL**  
**AGREEMENT**

**Section 8.01 Duration.** The Corporation commences on the Effective Date and continues for a term of twenty-five (25) years unless earlier terminated in accordance with this Article VIII.

**Section 8.02 Withdrawal by a Party.** Any Party may withdraw from the Agreement at any time upon notice given six (6) months in advance to Corporation, or in accordance with section 14.10 of this Agreement, and the Corporation thereafter shall exercise no power or authority within the territory of the withdrawing Party; provided that if the Corporation has incurred debts or obligations in reliance upon the payment by the Party of a share of the debt or obligation, the Party shall remain obligated for any such payment following its withdrawal from the Agreement; and provided further that the withdrawal of a Party shall not invalidate nor terminate prior to its stated termination date any Next Michigan Renaissance Zone, Next Michigan Development Area, TIF Plan or the collection of Tax Increment Revenues, or any other economic development incentive previously established or granted prior to the withdrawal of the Party, and the withdrawing Party shall be deemed to remain a Party if necessary for the limited purpose of preserving any of the foregoing incentives, and provided further, that in the event of a withdrawal by a Party, the Corporation shall not extend the effective term of any of the foregoing incentives beyond its stated termination date.

**Section 8.03 Termination.** This Agreement shall continue until terminated by the first to occur of the following:

- (a) When there is one (1) Party;
- (b) A three-fourths (3/4) vote of the voting members of the Corporation Board then serving in office; or
- (c) Expiration of the stated term of the Agreement.

**Section 8.04 Disposition upon Termination.** As soon as possible after termination of this Agreement, the Corporation shall wind up its affairs as follows:

- (a) All of the Corporation's debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Corporation and distribution of its assets shall be paid first; and
- (b) The remaining assets, if any, shall be distributed among the remaining Parties in accordance with Act 7 or other relevant law, and otherwise in proportion to their contributions to the Corporation.

**ARTICLE IX  
FEES**

**Section 9.01 Initial Annual Fees.** Commencing on the Effective Date, for the first three (3) term years the following fee schedule will apply, subject to modification as provided for in Section 9.02. Delta and Marquette Counties will each contribute \$10,000 annually. This fee by the Counties will also allow for any Township to become a Local Government Party to this Agreement. The Cities of Marquette and Escanaba will also contribute \$10,000 annually. This fee paid by the Cities will also allow for any City to become a Local Government Party to this agreement.

Please note, the annual fee does not strictly have to come from each party noted. It can be a shared fee from the other Local Government Parties that also wish to participate within the Corporation.

**OPTIONAL -** The initial annual fee may be waived in its entirety for the initial Local Government Parties to this agreement in consideration on the in-kind contributions made in support of creating the Corporation and pursuing appropriate supporting legislation. The fixed entry fee for Local Government Parties subsequently joining the Corporation may be waived in whole or in part by the Executive Committee in its sole discretion in consideration of in-kind contribution(s).

**Section 9.02 Annual Membership Fees.** Except as otherwise provided in Section 9.01, the Corporation Board shall establish and may revise biannually membership classes and a schedule of annual membership fees for the Corporation, including its membership classes. The membership fees shall include fee categories for Parties and for non-Party entities. The Corporation's operating expenses shall be paid for first from the collection of Tax Increment Revenues by the Corporation under a TIF Plan, and the amount of Tax Increment Revenues attributable to a Party's annual millage levy shall be credited against that Party's annual membership fee, provided that for the first five years from the establishment of a Next Michigan Development Area, the credit against the annual membership fee shall not exceed 1/3 of the then applicable fee. The balance of the annual membership fee shall be paid by the Party from any funds legally available for such purpose.

**Section 9.03 Personal Property, Assets and Services.** Any Party or entity from time to time may make contributions of personal property and assets to the Corporation. The reasonable value of any property and assets contributed may be credited against the Party's or other entity's initial annual membership fee as set forth in Section 9.02 and thereafter upon approval by the Corporation Board. Reasonable value shall be determined by the Corporation Board, in its sole discretion, by reference to a published market rate of the items in question, competitive quotes, or other objective measure approved by the Corporation Board.

**Section 9.04 Employees.** Any Party or entity from time to time may contribute employees to the Corporation. The reasonable value of employees contributed shall be credited against the Party's or other entity's initial annual membership fee as set forth in Section 9.02 and thereafter upon approval by the Corporation Board. Reasonable value shall be determined by the Corporation Board, in its sole discretion, based upon a proration for the time worked of the annual total compensation of the employee being loaned or other objective measure approved by the Corporation Board. The Corporation shall have full discretion to return the employee to the

Party or other entity for non-performance, in which case the Party shall be subject to and shall promptly pay the Party's or other entity's remaining membership fee.

**Section 9.05 Marketing Costs.** The Corporation annually shall prepare a marketing budget for the Corporation for the purpose of paying for marketing efforts designed to attract businesses to, and create jobs within, the Territory of the Corporation.

**Section 9.06 Acts and Omissions.** The Corporation shall only be liable for its own acts or omissions which occur after the Effective Date and none of the Parties shall be liable for any acts or omissions of the Corporation.

**Section 9.07 Execution of Documents.** The Corporation and each Party shall cooperate in order to execute and deliver to the Corporation any and all documents including bills of sale, assignments, and certificates necessary or appropriate to effectuate each Party's contribution to the Corporation.

**Section 9.08 Participation Agreement.** The Corporation and a Party may enter into a Participation Agreement for the purpose of executing the purposes and activities contemplated herein.

#### ARTICLE X ADMISSION OF OTHER PARTIES

**Section 10.01 Procedure.** Following the Effective Date, a Public Agency may become a Party by submitting a written request to the Corporation Board pursuant to guidelines established by the Corporation Board, payment of the then applicable membership fees, and in accordance with law. The Corporation Board shall approve or deny the request. Approval of this Agreement shall be by resolution of the entity seeking to become a Party.

**Section 10.02 Effective Date.** The effective date of admission of a Party is the date on which a fully executed copy of this Agreement which contains the name and signatory of the newly admitted Party is filed with Michigan Department of State, Office of the Great Seal, and filed with the County Clerk of each county which is a Party to this Agreement pursuant to Section 10 of Act 7.

**Section 10.03 Not an Amendment to Agreement.** The admission of additional Parties after the initial Effective Date of this Agreement shall not constitute an amendment to or alternative form of this Agreement nor change the Effective Date. Any amendment to or alternative form of this Agreement may be made only in accordance with Section 14.10

#### ARTICLE XI REVENUE SHARING, JOINT PLANNING COMMISSION

**Section 11.01 Revenue Sharing.** The Parties conceptually agree that the Corporation's success in attracting economic development should be shared among all Parties. The Parties therefore agree to investigate a fair and equitable means of sharing all or a portion of revenue derived by and for the benefit of the Parties in accordance with the provisions of Act 7 and other relevant law. However, it is initially anticipated that all revenue earned in the first three (3) term years will be utilized to operate, market, and manage the corporation.

**Section 11.02 Joint Planning Commission.** The Parties agree to consider the feasibility of establishing a joint planning commission under the Joint Municipal Planning Act, Act No. 226 of 2003, MCL 125.131 to 125.143.

## ARTICLE XII BOOKS AND REPORTS

**Section 12.01 Accrual Basis.** The Corporation shall maintain its books of account on an accrual basis of accounting, except as otherwise required by law.

**Section 12.02 Corporation Records.** The Corporation shall keep and maintain at the principal office of the Corporation all documents and records of the Corporation. The records of the Corporation shall include a copy of this Agreement along with a listing of the names and addresses of the Parties. Such records and documents shall be maintained until termination of this Agreement.

**Section 12.03 Financial Statements and Reports.** The Corporation shall cause to be prepared at least annually, at Corporation expense, audited financial statements prepared in accordance with the Budget Act and with generally accepted accounting principles and accompanied by a written opinion of an independent Certified Public Accountant. A copy of the annual financial statement and report shall be filed with the State Department of Treasury within six months after the end of the Corporation's Fiscal Year in accordance with law, with copies filed with each Party.

**Section 12.04 Freedom of Information Act.** The Corporation is subject to and shall comply with the Freedom of Information Act.

## ARTICLE XIII FINANCES

**Section 13.01 Annual Budget.** The Corporation shall be subject to and comply with the Budget Act. The Corporation Board annually shall prepare and approve a budget for the Corporation for each Fiscal Year. Each budget shall be approved not less than 15 days prior to the beginning of the Fiscal Year.

**Section 13.02 Deposits and Investments.** The Corporation shall deposit and invest funds of the Corporation, not otherwise employed in carrying out the purposes of the Corporation, in accordance with an investment policy established by the Corporation Board consistent with State law regarding the investment of public funds.

**Section 13.03 Disbursements.** Disbursements of funds shall be in accordance with guidelines established by the Corporation Board and in accordance with the Budget Act and law.

**ARTICLE XIV  
MISCELLANEOUS**

**Section 14.01 Notices.** Notice of all meetings of any Executive Committee and of the Corporation Board shall be given by the Chief Executive Officer, if any, or his or her designee, in the manner required by the OMA, FOIA, and shall be managed in accordance with State of Michigan Record Management schedules. In addition, at least three (3) days prior to the date set for the holding of any meeting of any Executive Committee or Corporation Board, written notice of the time and place of such meeting shall be sent by email or other electronic means to each Executive Committee member and Corporation Board member, as the case may be, at the email or other appropriate address of such member appearing on the records of the Corporation. Every notice by email or other electronic means shall be deemed duly served as of 5:00 p.m., prevailing Eastern time, next following the actual time when the notice is transmitted, as recorded by the Corporation's communication system.

**Section 14.02 Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein.

**Section 14.03 No Presumption.** This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

**Section 14.04 Severability of Provisions.** If any provision of this Agreement, or its application to any Person or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected but will be enforced to the extent permitted by law.

**Section 14.05 Governing Law.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan without regard to the doctrine of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

**Section 14.06 Captions.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement. They are solely for convenience of reference and do not affect this Section.

**Section 14.07 Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 14.08 Cross-References.** References in this Agreement to any Article include all Sections, subsections, and paragraphs in the Article; references in this Agreement to any Section include all subsections and paragraphs in the Section.

Section 14.09 Jurisdiction and Venue. In the event of any disputes between the Parties over the meaning, interpretation or implementation of the terms, covenants or conditions of this Agreement, the matter under dispute, unless resolved between the parties, shall be submitted to the courts of the State of Michigan, with original jurisdiction and venue vested in a court of competent jurisdiction.

Section 14.10 Amendment. This Agreement may be amended only upon written agreement of all Parties.

Section 14.11 Execution of Agreement; Counterparts. Each Party shall duly execute three (3) counterparts of this agreement, each of which (taken together) is an original but all of which constitute one instrument.

Section 14.12 Signatories. The signatories for the Parties each certify that he or she is authorized to enter into this Agreement and to execute and bind legally each Party to this document.

IN WITNESS WHEREOF, this Agreement is executed by each Party on the date hereafter set forth and effective as of the Effective Date.

FOR THE COUNTY OF MARQUETTE

Iris Cudde  
Witness

[Signature]  
Witness

By: [Signature]  
Gerald O. Corbin

Is: Chairman

Date: September 24, 2014

FOR THE CITY OF MARQUETTE

Margaret Gelle  
Witness

[Signature]  
Witness

By: [Signature]  
Robert Niemi

Is: Mayor

Date: 9/25/2014

FOR THE TOWNSHIP OF CHOCOLAY

Margaret Gelle  
Witness

[Signature]  
Witness

By: [Signature]  
Gary L. Walker

Is: Supervisor

Date: 9/25/2014

FOR THE TOWNSHIP \_\_\_\_\_ OF RICHMOND \_\_\_\_\_

[Signature]  
Witness

By: [Signature]  
William E. Lutzow

Its: Supervisor

[Signature]  
Witness

Date: 9/23/14

FOR THE COUNTY \_\_\_\_\_ OF DELTA \_\_\_\_\_

[Signature]  
Witness

By: [Signature]  
Thomas R. Elegeert

Its: Chairman

[Signature]  
Witness

Date: 10-13-14

FOR THE CITY \_\_\_\_\_ OF ESCANABA \_\_\_\_\_

[Signature]  
Witness

By: [Signature]  
Mark D. Tall

Its: Mayor

[Signature]  
Witness

Date: 10/13/14

FOR THE CITY \_\_\_\_\_ OF GLADSTONE \_\_\_\_\_

[Signature]  
Witness

By: [Signature]  
Joe Nara

Its: Mayor

[Signature]  
Witness

Date: 10/17/14

FOR THE TOWNSHIP \_\_\_\_\_ OF FORSYTH \_\_\_\_\_

[Signature]  
Witness

By: [Signature]  
Township Clerk

[Signature]  
Witness

Date: 10/16/2014

FOR THE TOWNSHIP OF ELY

Witness Mary H. Gille

Witness [Signature]

By: Fed A. Pepin  
Fed A. Pepin

Its: Supervisor

Date: 10/13/14

FOR THE TOWNSHIP OF WELLS

Witness Mary H. Gille

Witness [Signature]

By: Robert Threlton  
ROBERT THRELTON

Its: Supervisor

Date: 10/15/14

FOR THE TOWNSHIP OF ISHPEMING

Witness Mary H. Gille

Witness [Signature]

By: James Nankorvis  
James Nankorvis

Its: Supervisor

Date: 10/13/14

FOR THE TOWNSHIP OF FORD RIVER

Witness Katherine Reggiani

Witness [Signature]

By: Rachael Fountaine  
Rachael Fountaine

Its: Supervisor

Date: 10/17/14

FOR THE TOWNSHIP OF GARDEN

Witness Kimberly A. Peterson

Witness [Signature]

By: Raymond Young  
Ray Young

Its: Supervisor

Date: 10/16/14

FOR THE TOWNSHIP OF MAPLE RIDGE

Kimberly Peterson  
Witness

By: Judy Trudell  
Jody Trudell  
Its: Supervisor

[Signature]  
Witness

Date: 10/16/14

FOR THE TOWNSHIP OF NAHMA

Kimberly Peterson  
Witness

By: Warren Groleau  
Warren Groleau  
Its: Supervisor

[Signature]  
Witness

Date: 10-22-14

FOR THE TOWNSHIP OF BARK RIVER

Kimberly Peterson  
Witness

By: Gregg Johnson  
Gregg Johnson  
Its: Supervisor

[Signature]  
Witness

Date: 10/22/14

FOR THE \_\_\_\_\_ OF \_\_\_\_\_

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

Its: \_\_\_\_\_

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

FOR THE \_\_\_\_\_ OF \_\_\_\_\_

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

Its: \_\_\_\_\_

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



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

January 9, 2015

Mr. Scott H. Erbisch  
Marquette County Administrator  
Courthouse Complex  
234 W. Baraga Avenue  
Marquette, MI 49855

Re: Intergovernmental Agreement to establish the UP Next Michigan Development Corporation, a/k/a the "Superior Trade Zone"

Dear Mr. Erbisch:

I am responding to the request for approval of the proposed Intergovernmental Agreement to establish the UP Next Michigan Development Corporation, a/k/a the "Superior Trade Zone". The agreement was entered into by Marquette and Delta Counties, together with 14 cities and townships. Based on the review from the Attorney General's Office, I am notifying you that I approve the proposed Intergovernmental Agreement pursuant to the Urban Cooperation Act, 1967 (Ex Sess) PA 7, MCL 125.501 *et seq.*

Sincerely,

Rick Snyder  
Governor

c: Attorney General's Office, State Operations Division

## NEXT MICHIGAN DEVELOPMENT ACT

The Next Michigan Development Act was established by PA 275 of 2010. The Act is to encourage the creation of Next Michigan Development Corporations (NMDC) to foster economic opportunities in the State of Michigan. There are currently six (and a seventh under consideration) active NMDCs that can grant incentives not only to new businesses but also to expanding businesses currently residing in Michigan. The designated NMDCs are as follows:

### Northern Nexus NMDC

Website: [northernnexus.org](http://northernnexus.org)

Located within the Northwest Region of Michigan hosting five participating jurisdictions. This region offers the use of Traverse City's Cherry Capital Airport and road infrastructure to create great opportunities for business.

### I-69 International Trade Corridor NMDC

Website: [i-69internationaltradedcorridor.com](http://i-69internationaltradedcorridor.com)

Located in the East Central Region of Michigan with a depth of 33 participating jurisdictions. Resources of interest include Flint's Bishop International Airport, deep water ports, several interstate and state highway systems and the St. Clair Tunnel.

### Port Lansing NMDC

Website: [portlansing.com](http://portlansing.com)

Located within the Central Region of Michigan with participation from the City of Lansing and Ingham County. Port Lansing's supply chain assets include the Capital Region International Airport, which has the Global Logistics Centre, Foreign Trade Zone (FTZ) No. 275 and adjacent rail. The airport is minutes from I-69, I-96 and US-127 highways.

### VantagePort NMDC

Website: [vantageport.org](http://vantageport.org)

Located within Southeast Michigan spanning across nine jurisdictions. This region offers expansive transportation infrastructure driving investment in and around Wayne County's Detroit Metro and Willow Run Airport system.

### West Michigan Economic Partnership NMDC

Website: [grcity.us](http://grcity.us)

Located within the West Central Region of Michigan involving participation from seven jurisdictions. The benefits of this region include economical energy and abundant natural resources such as nearby Lake Michigan and the Gerald R. Ford International Airport.

### Superior Trade Zone NMDC

Located in the Upper Peninsula of Michigan hosting sixteen jurisdictions. This region takes advantage of the large tracts of land geo-

graphically located near the Delta County Airport Industrial Park and the Telkyte Industrial Park located at the former Air Force base in Marquette County. The Superior Trade Zone utilizes their natural resources in the agricultural, mining and tourism industries as well as trade opportunities that occur with Canada to the north.

### Detroit NMDC

New legislation allows for a seventh NMDC which is anticipated for the City of Detroit. The application to the Michigan Economic Development Corporation<sup>SM</sup> (MEDC) for this designation is presently in the early stages.

### WHY DO BUSINESS IN MICHIGAN?

Next Michigan Businesses are those located or locating within the NMDC regions that utilize multi-modal transportation in their supply or production chains. NMDCs aim to assist these logistics-based companies and the opportunities offered are as follows:

#### Renaissance Zones, PA 376 of 1996

Renaissance Zones established by a NMDC offer 100% relief from both real and personal property taxes and, if applicable, city corporate income tax, within the boundaries. The Renaissance Zones may be approved for up to 10 years and are phased out in 25% increments in the last three years. The Renaissance Zone works in conjunction with the designation of a Marketing Zone within the NMDC.

#### Local Development Financing Act, PA 281 of 1986

Allows a NMDC to utilize tax increment financing to fund public infrastructure improvements. There are several financing options for LDFA activities that allows for the capture of incremental growth of local property taxes over a period of time to fund these improvements.

#### New Personal Property Tax Exemption, PA 328 of 1998

Offers a 100% property tax exemption for an unlimited number of years on new personal property for companies within certain industries.

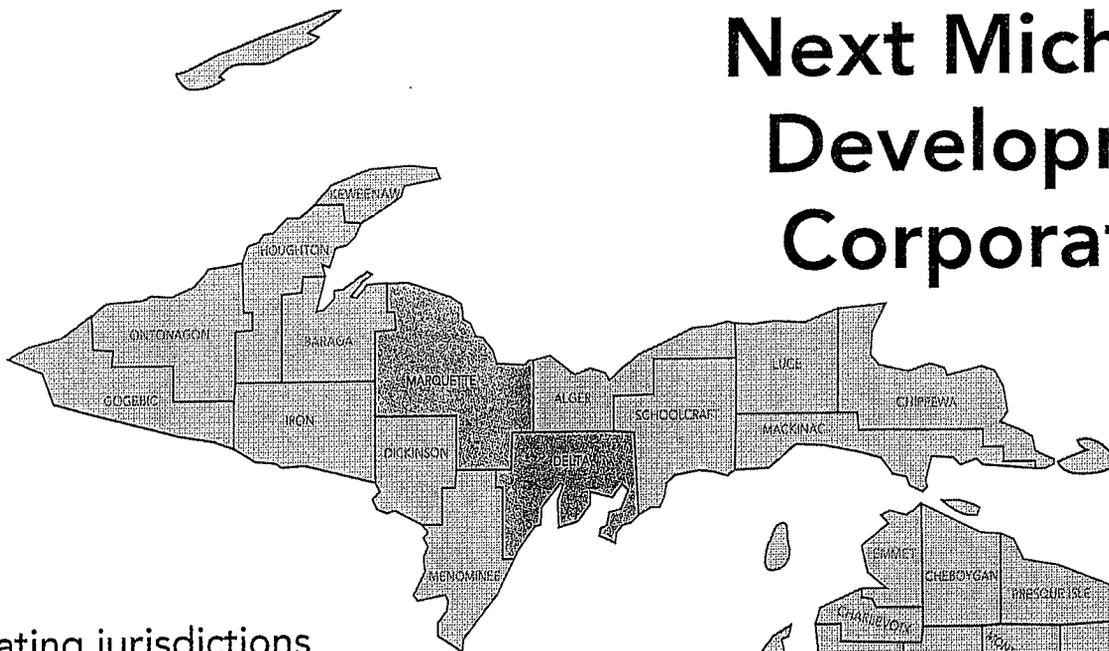
#### Industrial Facilities Tax Exemption pursuant to Act 198 of 1974

An Industrial Facilities Exemption certificate can be used to obtain a 50% property tax reduction for new, qualified real and personal property for a period of up to 12 years.

### CONTACT INFORMATION

For more information contact the MEDC Customer Contact Center at 517.373.9808.

# Next Michigan Development Corporations



## Participating jurisdictions

### Superior Trade Zone

Delta County  
Marquette County  
City of Escanaba  
City of Gladstone  
City of Marquette  
Bark River Township  
Chocolay Township  
Ely Township  
Ford River Township  
Garden Township  
Township of Ishpeming  
Township of Maple Ridge  
Nahma Township  
Richmond Township  
Wells Township  
Forsyth Township

### I-69 International Trade Corridor

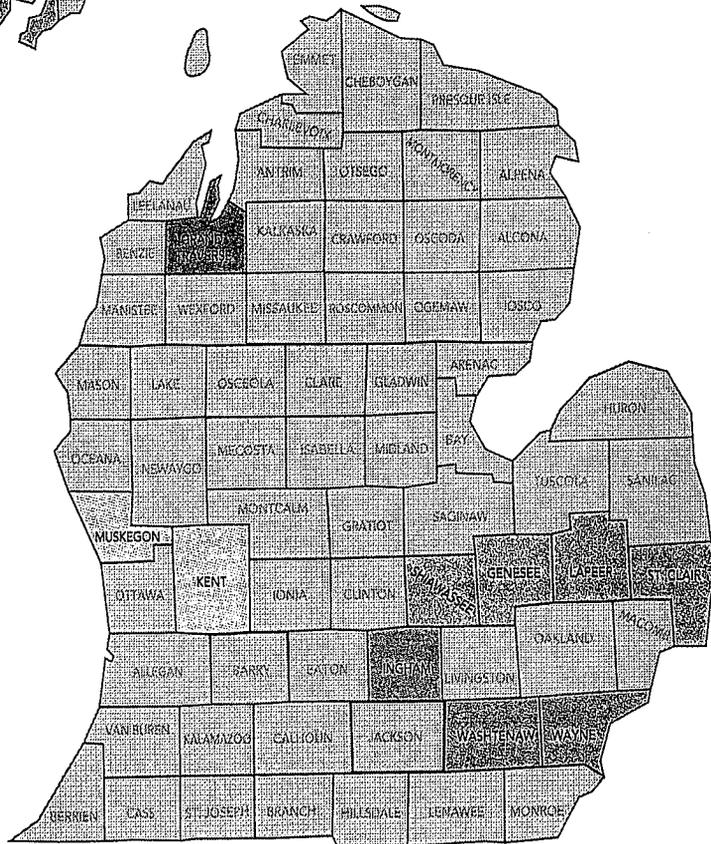
Village of Almont  
Afton Township  
Burton  
Corunna Genesee County  
Davison Township  
Durand  
Fenton  
Elin  
Flint Charter Township  
Grand Blanc  
Grand Blanc Charter Township  
Innlay City  
Kimball Township  
Lapeer  
Lapeer County  
Lapeer Township  
Village of Lennon  
Marysville  
Village of Morrice  
Mt. Morris Charter Township  
Mundy Charter Township  
Village of North Branch  
Owosso  
Perry  
Perry Township  
Port Huron  
St. Clair  
St. Clair County  
St. Clair Township  
Shawwassee County  
Vernon Township  
Village of Vernon

### Northern Nexus

East Tawas  
East Bay Charter Township  
Garden Charter Township  
Grand Traverse County  
Traverse City

### West Michigan Economic Partnership

Cascade Charter Township  
Grand Rapids  
Kent County  
Kentwood  
Muskegon  
Muskegon County  
Wyoming



### Port Lansing

DeWitt Charter Township  
Lansing

### VantagePort

Belleville  
Huron Township  
Romulus  
Taylor  
Van Buren Charter Township  
Washtenaw County  
Wayne County  
Ypsilanti  
Ypsilanti Charter Township



## Renaissance Zones

Originally, Michigan Renaissance Zones (“Geographic RZs”) were regions of the state designated as virtually tax free for any business or resident presently in or moving into a zone for a period of up to 15 years. Since then, the Renaissance Zone Act has been expanded shifting away from larger geographic area designations and now focuses on project specific, parcel specific designations. All Renaissance Zone types receive the same benefit. As of December 31, 2011, this portion of the program is being phased out and time extensions and new subzones are no longer available.

Today, projects are first vetted to determine eligibility before an application is released for consideration of a Renaissance Zone designation under the special zones: Agricultural Processing Facility, Renewable Energy, Forest Products or MSF Designated Zones. The application process is a combined effort of the qualified governmental unit and the company (to include the property owner if not the company). Development Agreements are required for all new designations.

Breakouts of the various Renaissance Zone types are outlined below:

### **AGRICULTURAL PROCESSING RENAISSANCE ZONES (APRZ)**

Michigan has a vibrant food and agricultural industry and is second in our nation in the variety of commodities grown for market. Agricultural Processing Renaissance Zones (APRZ) were created to promote agricultural processing operations in the State of Michigan and to enhance the industry overall. These APRZs differ from Michigan’s original renaissance zones because they require them to contain a company’s agricultural processing facility and can be located anywhere in Michigan.

### **FOREST PRODUCTS PROCESSING RENAISSANCE ZONES (FPPRZ)**

To assist in the development of a strong forest products industry in Michigan, Forest Products Processing Renaissance Zones (FPPRZs) were created to promote forest products operations in the state and to enhance the industry. These FPPRZs differ from Michigan’s original renaissance zones because they are required to contain a company’s forest products processing facility and can be located anywhere in Michigan.

## **MICHIGAN STRATEGIC FUND (MSF) DESIGNATED RENAISSANCE ZONES (MSF RZS)**

These zones were created specifically for significant projects that could be located anywhere throughout the state. Michigan Strategic Fund Renaissance Zones (MSF RZs) through the years have also entailed site specific zones specifically for the designation of the redevelopment of former manufacturing sites located throughout the state, also known as MSF Redevelopment Renaissance Zones. There also has been one designation permitted for an MSF Pharmaceutical Renaissance Zone and an MSF Alternative Energy Renaissance Zone, as well as the MSF zones utilized for all scopes of projects.

## **RENEWABLE ENERGY RENAISSANCE ZONES (RERZS)**

These zones were created to promote renewable energy operations in the state. These Renewable Energy Renaissance Zones (RERZs) differ from Michigan's original renaissance zones because they require them to contain a company's renewable energy facility and can be located anywhere in Michigan.

## **TOOL & DIE RECOVERY ZONES**

Tool & Die Recovery Zones are not geographic in nature but are based on collaborative agreements between tool and die companies that can be located across the state that join together to collaborate on key elements in legislation. The program was adopted to assist the tool and die industry in the state by making companies tax free if they were willing and agreed to collaborate with other tool and die companies. Tool & Die Recovery Zones are industry-based and company-specific with the intent of encouraging collaboration among tool and die companies to help them retain existing jobs and strengthen the companies to make them more competitive in the global marketplace.

## LOCAL DEVELOPMENT FINANCING ACT (LDFA)

The Local Development Financing Act (LDFA), Public Act 281 of 1986, as amended, allows eligible entities to establish area boundaries, create and implement a development plan, acquire and dispose of interests in real and personal property, issue bonds and use tax increment financing to fund public infrastructure improvements for eligible property. The tool is designed to promote economic growth and job creation. Communities across Michigan have used this tool to support companies in manufacturing, agricultural processing, and high technology operations.

### WHO IS ELIGIBLE TO ESTABLISH AN LDFA?

Any city, village or urban township, is eligible to create an LDFA district. In addition, any next Michigan development corporation is also eligible. A municipality may join with one or more municipalities in the same county to establish an additional authority only if in a certified technology park or certified alternative energy park. Definitions of urban townships can be found on the following page.

### WHAT CAN AN LDFA DO?

- Study and analyze unemployment, underemployment, and joblessness and the impact of growth upon the authority district.
- Acquire, construct or improve a public facility or infrastructure.
- Create and implement long-range economic development plans that create jobs and promote economic growth.
- Make and enter into contracts.
- Incur costs necessary to the function of the board.
- Acquire, own, lease, convey, demolish, relocate, rehabilitate, improve, prepare or otherwise dispose of real or personal property. Collect revenues from these activities.
- Accept grants and donations of property, labor or other things of value from a public or private source.

### HOW IS AN LDFA FINANCED?

The activities of the authority can be financed through one or more of the following sources:

- Tax increment revenues received following the completion of a tax increment financing plan.
- Proceeds of tax increment bonds.
- Proceeds of revenue bonds.
- Contributions to the authority for the performance of its functions.
- Revenues from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.
- Legislature appropriations for insufficient tax increment revenues.
- Loans from the Michigan Strategic Fund or the Michigan Economic Development Corporation.

### WHAT TAXES ARE ELIGIBLE TO BE CAPTURED THROUGH TAX INCREMENT FINANCING REVENUE?

All tax increment capture must be described in the tax increment financing plan. Local taxes on real and personal property are eligible to be captured. The LDFA may request capture from other taxing jurisdictions. These taxing jurisdictions have the ability to opt out or share a portion of the captured assessed value. 50% of school taxes can be captured for a maximum of fifteen years. Certified Technology parks may capture an additional 5 years pursuant to additional requirements. The following taxes are unable to be captured: Debt millages; taxes being levied under the zoological authorities act or art institute authorities act; taxes already being captured by downtown development authority, tax increment finance authority, or brownfield redevelopment authority.

## LOCAL DEVELOPMENT FINANCING ACT (LDFA) *continued*

### ELIGIBLE PROPERTY

Properties eligible for tax increment capture are structures, buildings, land improvements and other real property and equipment located within a district, whose primary use is either manufacturing, high technology, value added agricultural processing or energy production.

### WHAT ACTIVITIES IN THE DEVELOPMENT PLAN ARE ELIGIBLE FOR FUNDING?

- Public infrastructure improvements that directly benefit the district, including a street, road, bridge, storm water or sanitary sewer, sewage treatment facility, water line, water tower, etc. Railroads and utility lines (electric and telecommunication are also eligible).
- Acquisition of land, demolition, site preparation and relocation costs.
- Certified alternative energy parks and certified technology park development.
- Administrative costs.

### WHAT IS THE PROCESS TO ESTABLISH AN LDFA?

*Note: The following steps are offered as general guidelines only. Legislation should be reviewed by local officials prior to starting the designation process.*

1. The governing body of a municipality declares by resolution adopted by a majority of its members elected and serving its intention to create and provide for the operation of an authority.
2. The governing body sets a public hearing, based upon its resolution of intent, to create a LDFA.
3. Notice must be given of a public hearing by publication and mail to taxpayers within a proposed district and to the governing body of each taxing jurisdiction levying taxes that would be subject to capture of tax increment revenues.
4. Governing body takes comments at the public hearing.
5. Within 60 days, the governing body of another taxing jurisdiction may, by resolution, exempt its taxes from capture and file the resolution with the clerk of the municipality.

6. Not less than 60 days after the public hearing, the municipality adopts a resolution establishing the LDFA and designating the boundaries of the district.
7. Resolution shall be filed with the Secretary of State and published once in the local newspaper.
8. The municipality appoints the members of the LDFA Board. The Board shall consist of seven members appointed by the governing body, one member appointed by the county commission, one member appointed by the community or junior college and two members appointed by each local government unit that levied 20% or more of the ad valorem taxes levied against all property located in the authority district in the year before the year in which the authority district is established. Additional members shall only vote on matters relating to the authority district located within their respective local unit of government.

Once the LDFA is established, the LDFA must create a development plan, to be adopted by the municipality, that outlines what the authority may do and what funds may be used. If the LDFA Board anticipates the need for capturing tax increment to support a project, a Tax Increment Financing Plan must also be adopted. Adoption of these plans also require public notices and hearings. Tax increment revenues can only be spent in accordance of the Tax Increment Financing Plan. The authority must submit an annual financial report to the governing body and state tax commission.

Land may be added or removed from a district pursuant to the same requirements prescribed for adopting the resolution creating the LDFA.

### CONTACT INFORMATION

For more information, contact the Michigan Economic Development Corporation<sup>SM</sup> (MEDC) Customer Contact Center at 517.373.9808.

## PERSONAL PROPERTY TAX RELIEF IN DISTRESSED COMMUNITIES (PA 328)

Public Act 328 of 1998 (PA 328) allows distressed communities, county seats and certain border county communities to abate personal property taxes on new investments made by eligible businesses.

### ELIGIBILITY AND PROCESS

Eligible location sites include cities, villages and townships that contain distressed areas, as defined under the Michigan State Housing Development Authority Act, and all county seats, as defined under the Neighborhood Enterprise Zone Act. Eligible cities, villages, townships and county seats are listed on the following page.

Eligible businesses that locate in a border county and receive approval from the Michigan State Treasurer and President of the Michigan Strategic Fund may also receive this incentive. Berrien, Branch, Cass, Chippewa, Dickinson, Gogebic, Hillsdale, Iron, Lenawee, Menominee, Monroe, St. Clair, St. Joseph and Wayne are eligible border counties. The business must locate in a local governmental unit that is served by at least four of the following services: water, sewer, police, fire, trash or recycling.

Eligible projects include manufacturing, mining, research and development, wholesale trade and office operations. Retail businesses and casinos are not eligible.

Businesses may apply for the abatement through their local taxing unit if located in an eligible community. Locally approved applications are filed with the State Tax Commission (STC), which must approve or deny the local resolution within 60 days. The State Treasurer, with the written consent of the Michigan Economic Development Corporation<sup>SM</sup> (MEDC), is required to provide advice to the STC as to whether the exemption is necessary to reduce unemployment, promote economic growth, and increase capital investment.

New personal property is defined as property not previously subject to property taxes in any other jurisdiction in this state. This includes personal property already in Michigan, but exempt for another reason (e.g. property previously owned by a local unit

of government). To determine if certain property is considered new, please contact the Department of Treasury at 517.373.0675.

### TERMS OF ABATEMENT

Abatements under PA 328 reduce property taxes by the full millage rate, including state and local levies. The eligible local units may, by resolution, exempt new personal property in any of the following areas: an industrial development district (PA 198 of 1974), a Renaissance Zone<sup>o</sup>, an enterprise zone, a brownfield redevelopment zone, an empowerment zone, a tax increment financing district, a local development financing district, a Next Michigan Development Corporation District or a downtown development district.

The local community and the business negotiate the length of abatement for the new personal property tax. The law does not specify a maximum or minimum number of years.

### EXTENSION UNDER PERSONAL PROPERTY TAX REFORM

Personal property exempt under PA 328 and eligible in the future for the Personal Property Tax (PPT) exemption will automatically continue to be exempt under PA 328 until that property may be claimed as exempt from the PPT in the current tax year.

### CONTACT INFORMATION

For more information, contact the MEDC Customer Contact Center at 517.373.9808.

*(List of Eligible Distressed Areas and County Seats on next page.)*

## ELIGIBLE DISTRESSED COMMUNITIES AND COUNTY SEATS

This list reflects a group of communities that qualify for the PA 328 exemption based on Neighborhood Enterprise Zone designation, pursuant to changes to PA 147 of 1992.

170 EDAs | 129 cities | 26 townships | 15 villages

### CITIES

Adrian	Crystal Falls	Hastings	Mason	Saginaw
Albion	Dearborn	Hazel Park	Melvindale	Sandusky
Allegan	Dearborn Heights	Highland Park	Menominee	Sault Ste. Marie
Alma	Detroit	Hillsdale	Midland	Southfield
Alpena	Dowagiac	Holland	Monroe	St. Ignace
Ann Arbor	East Lansing	Houghton	Mt. Clemens	St. Johns
Bad Axe	Eastpointe	Howell	Mt. Morris	St. Joseph
Bangor	Ecorse	Inkster	Mt. Pleasant	St. Louis
Battle Creek	Escanaba	Ionia	Munising	Standish
Bay City	Ferndale	Ironwood	Muskegon	Stanton
Benton Harbor	Flint	Iron Mountain	Muskegon Heights	Sturgis
Bessemer	Gaastra	Iron River	Niles	Tawas City
Big Rapids	Gaylord	Ishpeming	Norton Shores	Taylor
Bronson	Gibraltar	Ithaca	Norway	Three Rivers
Burton	Gladstone	Jackson	Oak Park	Traverse City
Cadillac	Gladwin	Kalamazoo	Omer	Trenton
Caro	Grand Haven	Lake City	Onaway	Vassar
Carson City	Grand Rapids	Lansing	Owosso	Wakefield
Caspian	Grayling	Lapeer	Petoskey	Warren
Center Line	Hamtramck	Lincoln Park	Pinconning	Wayne
Charlevoix	Harbor Beach	Livonia	Pontiac	West Branch
Charlotte	Harper Woods	Ludington	Portage	White Cloud
Cheboygan	Harrison	Manistee	Port Huron	Wyandotte
Coldwater	Harrisville	Manistique	Reed City	Wyoming
Coleman	Hart	Marquette	River Rouge	Ypsilanti
Corunna	Hartford	Marshall	Rogers City	

### TOWNSHIPS

Benton (Berrien)	Carrollton	Elmwood (Tuscola)	Mt. Morris (Genesee)	Royal Oak (Oakland)
Buena Vista	(Saginaw)	Emerson (Gratiot)	Oscoda (Iosco)	Sebewaing (Huron)
(Saginaw)	Champion	Genesee (Genesee)	Oliver (Huron)	Sheridan (Calhoun)
Calumet	(Marquette)	Marlette (Sanilac)	Pulawski	Spaulding (Saginaw)
(Houghton)	Columbia (Tuscola)	Minden (Sanilac)	(Presque Isle)	Turner (Arenac)
Carp Lake	Duncan (Houghton)	Montrose (Genesee)	Redford (Wayne)	Wisner (Tuscola)
(Ontonagon)	Elba (Gratiot)			

### VILLAGES

Atlanta	Beulah	Eagle River	Leland	Ontonagon
Baldwin	Cassopolis	Kalkaska	Mio	Paw Paw
Bellaire	Centreville	L'Anse	Newberry	Roscommon

## INDUSTRIAL PROPERTY TAX ABATEMENT (PA 198 OF 1974, AS AMENDED)

Industrial property tax abatements provide incentives for eligible businesses to make new investments in Michigan. These abatements encourage Michigan manufacturers to build new plants, expand existing plants, renovate aging plants, or add new machinery and equipment. High technology operations are also eligible for the abatement.

High-technology activity is defined in the Michigan Economic Growth Authority (MEGA) Act as: advanced computing, advanced materials, biotechnology, electronic device technology, engineering or laboratory testing related to product development, medical device technology, product research and development and advanced vehicles technology or technology that assists in the assessment or prevention of threats or damage to human health or the environment. Abatements under PA 198 can significantly reduce property taxes on new investment for eligible firms.

### ESTABLISHING THE DISTRICT

Tax benefits are granted by the legislative body of the city, township or village in which the investment will be located. A public hearing is held and a resolution is adopted to approve the establishment of an Industrial Development District (for a new project) or a Plant Rehabilitation District (for a rehabilitation project). A written request to establish the district must be filed with the clerk of the local unit of government prior to commencement of construction, alteration or installation of equipment.

Once the district is established, the company may apply for an abatement on real and personal property taxes for up to 12 years.

### APPLICATION PROCESS

Industrial property tax abatements must be approved at both the local and state levels. The eligible business files an application (Michigan Department of Treasury Form 1012) with the local clerk after the district has been established and no later than six months after commencement of the project. The local unit adopts a resolution approving the application and determines

the length of years for the abatement. After a local public hearing, the application is filed and reviewed by the State Tax Commission (STC) and the Michigan Economic Development Corporation<sup>SM</sup> (MEDC). The STC then grants final approval and issues the exemption certificate. Locally approved applications with required attachments must be received by the STC no later than October 31, in order to receive consideration and action by December 31.

Applications to the STC must include an agreement signed by the local unit and the operator of the facility outlining the conditions of the abatement. This shall include an affidavit that no payment of any kind in excess of the fee allowed under the Act has been made or promised in exchange for favorable consideration of the exemption application.

Once approved, the firm pays an Industrial Facilities Tax (IFT), instead of the property tax, which reflects the abatement savings.

### ELIGIBLE FACILITIES

Industrial plants eligible for tax abatement are those that primarily manufacture or process goods or materials by physical or chemical change. Related facilities of Michigan manufacturers such as offices, engineering, research and development, warehousing or parts distribution are also eligible for exemption.

Research and development laboratories, high-tech facilities and large communications centers can qualify throughout Michigan.

Facilities used for warehousing, distribution or logistics purposes can be eligible if they locate in specific border counties. At least 90% of the property, excluding the surrounding green space, must be used for a warehouse, distribution, logistics or communications center and occupy a building or structure that is more than 100,000 square feet. Eligible border counties include Berrien, Branch, Cass, Chippewa, Dickinson, Gogebic, Hillsdale, Iron, Lenawee, Menominee, Monroe, St. Clair, St. Joseph and Wayne.

## INDUSTRIAL PROPERTY TAX ABATEMENT (PA 198 OF 1974, AS AMENDED) *continued*

The exemption applies to buildings, building improvements, machinery, equipment, furniture and fixtures. Real and personal property are eligible whether owned or leased (provided the lessee is liable for payment of taxes on the property).

The exemption covers only the specific project that is the subject of the application. Any buildings and equipment that existed prior to construction of a new facility are not exempt. If the project is for rehabilitation, the value of any pre-existing obsolete property is exempt from ad valorem property taxes, but will be used as the base for the IFT. Similarly, any structures or equipment added after completion of the project are fully taxable.

Land is specifically excluded from the benefits of the act and is fully taxable.

### TAX IMPACT

#### *Real and Non-Industrial Personal Property IFT Treatment*

The IFT on a new plant and non-industrial personal property, such as some high-tech personal property, is computed at half the local property tax millage rate. This amounts to a reduction in property taxes of approximately 50%. In addition, the 6-mill SET may be abated 100%, 50% or not at all. Any SET abatement must be negotiated with the MEDC.

#### *Rehabilitation of Real or Personal Property IFT Treatment*

For an obsolete plant or machinery that is being replaced or restored, the IFT is frozen at the assessed value of the plant prior to improvement. This results in a 100% exemption from property tax on the value of the improvements.

#### *Speculative Building IFT Treatment*

In order for a speculative building to qualify for abatement, the local unit must approve a resolution declaring it as a speculative building prior to identifying occupants. Initial construction and finishing costs would be eligible for a reduction in property taxes of approximately 50%.

#### *Commercial Personal Property Tax Relief*

Commercial personal property will receive an automatic reduction of 12 mills for local schools on their property tax bill.

#### *Extension Under Personal Property Tax Reform*

Personal property abated under PA 198 and eligible in the future for the Personal Property Tax (PPT) exemption will automatically continue to be abated under PA 198 until that property may be claimed as exempt from the PPT in the current tax year. Businesses with a PA 198 extension will continue to pay the IFT until the property becomes eligible for the PPT exemption.

### CONTACT INFORMATION

For more information, contact the MEDC Customer Contact Center at 517.373.9808.

**SUPERIOR TRADE ZONE  
INAUGURAL MEETING  
June 16, 2015**

A meeting of the Superior Trade Zone was held on Tuesday, June 16, 2015, at 12:00 p.m. (noon) at the Rock Lion's Club, 14454 M35, Rock, MI 49880

**PRESENT:** Escanaba City Manager Jim O'Toole, Marquette County Administrator Scott Erbisch, Marquette City Manager William Vajda, Delta County Administrator Ryan Bergman, City of Escanaba Mayor Marc Tall, City of Gladstone Darla Falcon, City of Marquette J. Michael Coyne, Maple Ridge Township Judy Trudell, Marquette County Gerald Corkin, Richmond County William Leutzow, Wells Township Robert Therrian, Escanaba Executive Assistant Buffy Smith, Escanaba Assessor Daina Norden

Meeting called to order at 12:00 p.m. by Escanaba City Manager Jim O'Toole, Marquette City Manager Bill Vajda, and Marquette County Administrator Scott Erbisch.

**ROLL CALL**

Executive Assistant Buffy Smith conducted the roll call.

**APPROVAL/CORRECTION TO PREVIOUS MONTH'S MEETING MINUTES**

N/A

**APPROVAL/ADJUSTMENTS TO THE AGENDA**

City Manager Jim O'Toole asked for a consensus of the group to add a discussion on the upcoming Rock Sesquicentennial celebration. It was the consensus of the group to add that as new business.

**CONFLICT OF INTEREST DECLARATIONS**

None.

**UNFINISHED BUSINESS**

N/A

**PUBLIC HEARING/NEW BUSINESS**

**New Business #1 – Next Michigan Development Act – Next Michigan Superior Trade Zone Corporation.**

Escanaba City Manager Jim O'Toole opened the discussion of the Next Michigan Development Act - Superior Trade Zone Next Michigan Development Corporation Inter-local Agreement explaining the purpose of the authority, general powers of the corporation, specific powers and limitations, and all processes that would be needed in building the corporation foundation. It was explained that a board will need to be created consisting of a primary and secondary delegate from each unit of government that is a party to the inter-local agreement. Those delegates would need to be named by resolution from their perspective local units of government and they will be empowered to act on behalf of their local unit of government. A general discussion took place regarding a date in which members would be appointed. That date being July 15, 2015.

There was general discussion about moving forward, once a board was seated, which included the need to create rules of procedure, meeting minute approvals, pursuit of MEDC marketing and branding financial resources, organization of economic cluster round-tables, and review of existing regional economic development incentives for the region.

Marquette City Manager William Vajda addressed the group stating effective leaders will be chosen by their units of government, meetings will be monthly going forward, and representation will be as one (1) region to the state. He stated the needs, which include administration, policy, and work with other interests, would be taken up by the newly formed board. Discussion at the next meeting includes a review of best practices from around the state and country, best practice round table reviews of various industry clusters, identification of the types of infrastructure needs that may be required within the region, and other ideas in the trade zone that may be desired.

Marquette County Administrator Scott Erbisch addressed the group stating that once a board is in place, the board will begin to identify the assets already located within the region, as well as identifying assets that might be needed to expand the intermodal needs of the region. General discussion took place about the "seed" money being contributed by Marquette County, Delta County, the City of Marquette, and the City of Escanaba, with each of those groups contributing \$10,000.

Escanaba City Manager Jim O'Toole opened up the floor for comment/questions.

City of Marquette Mayor Michael Coyne questioned how other Next Michigan Development Authority's were staffing their operation. There was a discussion that most groups assigned duties to corporation members in an effort to keep expenses down. Mayor Coyne also asked if a unit of government corporation board appointee had to be a resident of the community they represented. A general discussion took place about the desired qualifications of a perspective board appointee and that each unit of government has one equal vote per unit of government. Mayor Coyne suggested sending a bio as to why someone is selected as a member.

#### **New Business #2 – Rock Sesquicentennial Celebration.**

Maple Ride Township Supervisor Judy Trudell discussed the roll-out of the Rock Sesquicentennial (150-year) celebration, including access to historical collections and displays, which commemorate many interesting elements of Rock's past. Mrs. Trudell invited all meeting attendees to participate in the summer long celebration, which was scheduled to kick off on June 17, 2015.

#### **GENERAL PUBLIC COMMENT**

None.

#### **AUTHORITY/STAFF COMMENT AND ANNOUNCEMENTS**

City Manager Bill Vajda stated meetings will be rotating between Escanaba and Marquette going forward. The Steering Committee then thanked the residents of Maple Ridge Township for hosting the meeting and supplying a lunch to all meeting participants.

#### **ADJOURNMENT**

A motion was made by Escanaba City Manager Jim O'Toole, seconded by Marquette City Manager William Vajda, to adjourn the meeting. The meeting adjourned at 1:25 p.m.

Ayes were unanimous.



**SUPERIOR TRADE ZONE  
NEXT MICHIGAN DEVELOPMENT  
CORPORATION**

234 W. BARAGA AVE.  
MARQUETTE, MI 49855

Bark River Township – Gregg Johnson  
Chocoley Township – Gary Walker  
City of Escanaba – Marc Tall  
City of Gladstone – Darla Falcon  
City of Marquette – J. Michael Coyne  
Delta County – Mary Harrington

Ely Township – Ted Pepin  
Ford River Township – Rachael Fountaine  
Forsyth Township – Jane Nordeen  
Garden Township – Ray Young  
Ishpeming Township – James Nankevis  
Maple Ridge Township – Judy Trudell

Marquette County – Gerald Corbin  
Nahman Township – Warren Groleau  
Richmond Township – William Luetzow  
Wells Township – Robert Therrian

June 17, 2015

The Honorable Anthony Foxx, Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**RE: Letter of Support for TIGER VII Application from Northwood Rail Transit Commission (NRTC)**

Dear Secretary Fox,

The Superior Trade Zone Next Michigan Development Corporation strongly support the 2015 TIGER VII application submitted by the Northwoods Rail Transit Commission (NRTC), a governmental body consisting of seven Upper Michigan and thirteen Wisconsin "rural" counties, located in the heart of the Great Lakes Forests Region (GLFR).

NRTC's application is transformational, requesting a \$4.8 million TIGER VII grant to combine with \$1.2 million private sector funding and \$7.8 million from the States of Michigan and Wisconsin (total initial funding, \$13.8 million) to establish a publicly owned GLFR rail log car fleet. It is expected they will lose 60% of current log rail cars in 2017 due to mandatory rules set by the American Association of Railroads, which will force them to be put into retirement. Without new rail cars, trucking would be the only option to address this need. This would potentially cause even more wear on our roads and bridges and would also hurt the trucking industry as they are already in need of drivers to keep up with the demand of getting logs out of the woods. One log rail car alone is equivalent to three less trucks on our roads, which in the long run could save money on road wear, pollution, etc. In addition, Car-for-car, the new GLFR log cars provide greater capacity, increasing logger productivity, and lower operating costs, than the cars they will replace. Railroad productivity will improve by operating existing and new log cars as an integrated GLFR fleet, providing a model for future investment to replace and expand the entire fleet and convert additional over-the-road trucking of logs to rail, with attendant direct public benefits and indirect public and private economic benefits to the rural Great Lakes Forest Region.

The log rail cars have the potential to be manufactured locally, as there is a great demand for new rail cars. The Escanaba and Lake Superior Railroad (E&LS) are working on becoming certified to do this. This has the potential to create 40-50 jobs and progress the probability of reopening out of service rail line sectors in the area.

We fully support this project to you as an outstanding candidate for achieving the full range of TIGER VII funding objectives and are committed to participating in this initiative.

Sincerely yours,

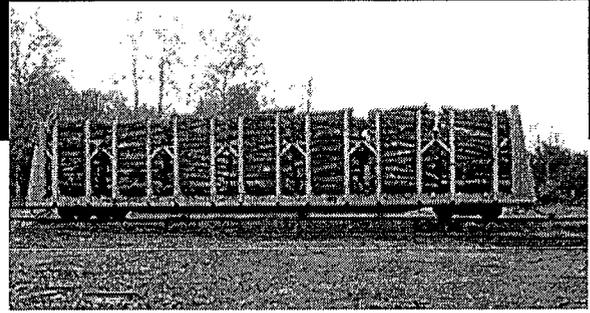
Ryan C. Bergman  
Administrator  
Delta County, MI

Scott H. Erbish  
Administrator  
Marquette County, MI

James V. O'Toole  
City Manager  
Escanaba, MI

William Vajda  
City Manager  
Marquette, MI

# Log Car Fleet Fact Sheet



## CREATING A PUBLICLY-OWNED LOG CAR FLEET

The Wisconsin forest products industry is in crisis today as an insufficient amount of pulp wood is arriving at mills across the Great Lakes Forests Region, comprising northern and central Wisconsin, Michigan's Upper Peninsula, and northeast Minnesota. Without action by public entities to supply rail cars soon, demand for additional long-haul log truck traffic on our state and county highway system will increase.

## STATUS OF CURRENT RAIL FLEET

About 1,200 log cars serve the region today. More than 80% of these cars are railroad-owned and the balance is privately-owned. Many of the cars served the steel industry before conversion to move logs. These cars are approaching the end of their 40 or 50-year life, as mandated by national rules set by the American Association of Railroads. Without replacement, most log cars will be retired from the fleet by 2017 and the traffic diverted to additional log trucks delivering wood to mill.



## WHY PUBLIC OWNERSHIP OF NEW CARS?

The large pulp wood users are in difficult financial condition and challenged today in receiving the wood supply they need. To ensure that the thousands of jobs that these mills and the forest products industry they support are retained, it is critical to retain rail for moving raw forest products. While there are definitely operational improvements needed and rail line segments that could be restored to service to help, those things are meaningless if there aren't cars to move the product. In today's challenging economy, these mills cannot afford to buy private cars. Without public assistance, trucking will endeavor to pick up the current rail business. But log trucking is also strapped for drivers and is really needs to focus its productivity in getting logs out of the woods.

## WHO WOULD SUBMIT A PROPOSAL?

The Northwoods Rail Transit Commission (NRTC), a group of northern Wisconsin and Upper Peninsula counties, would apply with the state of Wisconsin for a Freight Rail Preservation Program (FRPP) grant to provide 80% funding to build a log car fleet. The 20% private match would be provided by CN, which may not otherwise allocate much in resources to replace the many retiring log cars. The 2015 application would be for 50 cars (10 privately-funded and 40 state-funded).

## WHERE WOULD NEW CARS BE BUILT?

There is presently great demand for new rail cars and car manufacturers are taking as long as two years to fulfill car orders. Fortunately, the Escanaba & Lake Superior Railroad (E&LS) is presently applying for certification to become a manufacturer of new rail cars. The E&LS has refurbished railroad cars for years at its Escanaba car shop and would likely build cars both there and possibly at an expanded facility in Crivitz. The E&LS could easily manufacture 50-100 or more log cars annually at the two facilities.

## IS OTHER FUNDING INVOLVED?

Michigan has been approached and is engaged in considering a financial role in complementing Wisconsin's FRPP grant process. If a FRPP application was successfully awarded to the NRTC, the grant award could be used as a building block for the next round of federal TIGER VII competitive grants. Last year, the NRTC TIGER VI application for 150 log cars was recommended by US DOT but was not funded, largely due to a misunderstanding as to whether or not the cars would be built in the US.

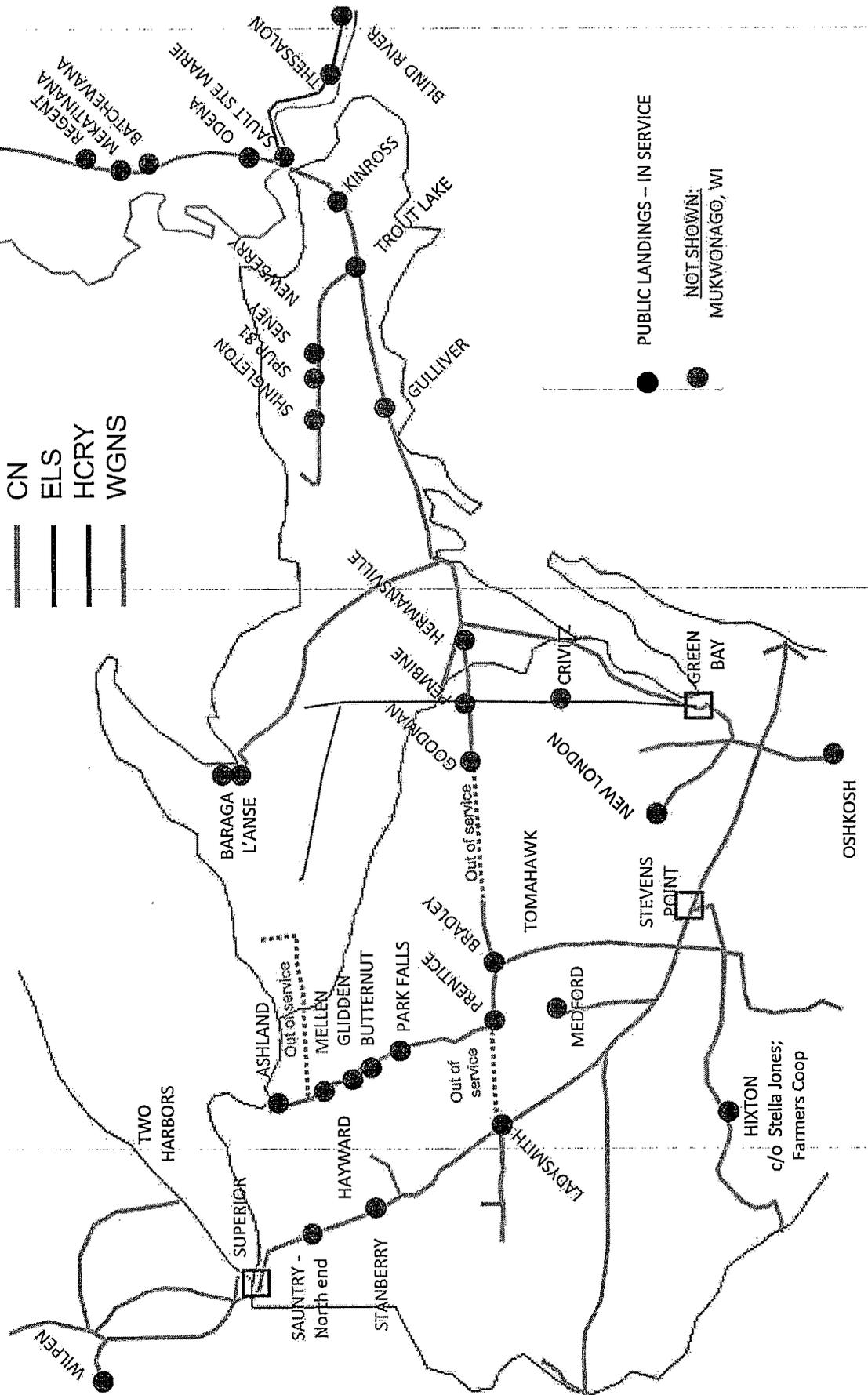
## WHAT ACTION IS NEEDED TO ALLOW PUBLICLY-OWNED LOG CARS?

Chapter 85.01(3) of the Wisconsin statutes must be amended to allow state funds to be used for the purchase of rail cars operated by, leased from, or governed by a rail transit commission. State funds can currently be used for fixed property; the statute must be amended to make the needed rail cars eligible for FRPP funding.

(See map on opposite side reflecting Public Log Landing locations.)

# CN-ELS-HCRY LOG LOADING LOCATIONS

Note – private company landings excluded



NB #3  
CC 7/2/15

MEMORANDUM

June 24, 2015

TO: Jim O'Toole, City Manager  
FROM: Kim Peterson, Recreation Director *KP*  
SUBJECT: City Council Agenda of Thursday, July 2, 2015

**AWARD OF BID FOR TENNIS COURT RESURFACE PROJECT**

Proposals were received on June 9, 2015, to provide all labor and materials, filing, resurfacing and related work for the Veteran's Court Resurfacing Project – Two (2) Courts. Six (6) invitations to submit proposals were sent to contractors with three (3) received. It is recommended by administration and the Recreation Advisory Board that the tennis court resurfacing contract be awarded to American Systems of Wisconsin, Inc. of Suamico, Wisconsin, in the amount of \$9,700. \$12,000 has been budgeted.

Please find attached the Court Resurfacing Project Bid, American Systems of Wisconsin Bid, Photographs and Record of Bids.

DATE: Monday, May 18, 2015

BID: Court Resurfacing Project

BID OPENING: Tuesday, June 9, 2015

TO BIDDERS: Monday, May 18, 2015

ADVERTISED: Saturday, May 23, 2015

INVITATIONS TO BID SENT TO: Six (6)

ASPHALT DOCTOR QUALITY  
SEAL COATING  
P.O. Box 1021  
Escanaba, MI 49829  
Attn: Rio

FAHRNER ASPHALT SEALERS INC  
2800 Mecca Drive  
P.O. Box 95  
Plover, WI 54467-0095

AMERICAN SYSTEMS CORPORATION  
P.O. Box 373  
Suamico, WI 54173

ARNT ASPHALT SEALING  
1805 Ludington Street  
Escanaba, MI 49829  
Attn: Phil Arnt

VALLEY SEAL COATS  
W6265 Contractor Drive  
Appleton, WI 54914  
Attn: Bill Kramer

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TENNIS COURTS UNLIMITED  
P.O. Box 156  
Watervliet, MI 49098

## NOTICE TO BIDDERS

Sealed bids will be received by the City of Escanaba at the office of the City Clerk, on or before 2:00pm, e.s.t., on: **Tuesday, June 9, 2015** for:

### VETERAN'S COURT RESURFACING PROJECT

The bids will be publicly opened and read in Room 101 at City Hall, located at 410 Ludington Street, Escanaba, Michigan at said time and date.

Bidder's proposals and/or specifications may be obtained from the office on the City Clerk, located at 410 Ludington Street, Escanaba, Michigan 49829. No bids will be considered unless the proposal form and/or specifications (furnished by the City of Escanaba, Michigan), are properly completed and enclosed in a sealed envelope marked:

### VETERAN'S COURT RESURFACING PROJECT BID OF JUNE 9, 2015

In addition, the City of Escanaba, Michigan will not consider any proposal which has not been received prior to the published time, date, and year of bid opening. (FAX transmittals will not be accepted.)

A Certified Check, Cashier's Check, or Bidder's Bond, drawn payable, without condition, to the City of Escanaba, Michigan, in an amount not less than 10% of the bid, will be submitted with each proposal as a guarantee that if the bid is accepted, the bidder will furnish materials or services as stated in his or her proposal, he or she shall forfeit said deposit to the City of Escanaba, Michigan as liquidated damages. The acceptance of the proposal will be contingent upon the bidder's acceptance of this proviso.

The City of Escanaba, Michigan reserves the right to reject any or all bids, or any part thereof at its discretion, and to waive any irregularities in the bidding. The City of Escanaba, Michigan may also split bids at its discretion. The City further reserves the right to negotiate directly with any and all bidders concerning any matter related to any bid.

All City of Escanaba, Michigan bids are prepared so as to afford all vendors the equal opportunity for fair and equitable competition. The City of Escanaba, Michigan assumes no liability or responsibility for any errors or oversights in the preparation and/or publication of bids.

Tom Penegor  
Purchasing/Recreation Director  
City of Escanaba

**SPECIFICATIONS  
for  
COURT RESURFACING PROJECT**

**GENERAL SPECIFICATIONS**

**1. SCOPE OF WORK**

Provide all labor and materials for sealing, filling, re-surfacing and related work for the Veteran's Tennis Courts.

**2. CONSTRUCTION SCHEDULE**

A. Veteran's Park  
Re-surface two (2) existing court batteries.

**3. BID SECURITY**

With this proposal, the Bidder shall furnish bid security in an amount not less than ten percent (10%) of the proposal as a guarantee that if the bid is accepted, the Bidder will furnish materials or services as stated in his/her proposal; as per specifications herein. Bid security shall be a certified check or cashier's check drawn payable without condition to the City of Escanaba, Michigan. Bids may not be withdrawn within thirty (30) days after opening date without forfeiting bid security. Bid security of the successful Bidder will be retained by the City until satisfactory completion of the work.

Performance and payment bonds are not required.

**4. EXAMINATION OF SITES AND BID DOCUMENTS**

Each Bidder shall visit the site and acquaint himself/herself with conditions relating to the work so that bidder may fully understand the difficulties and restrictions which may affect execution of work.

Bidders shall also thoroughly examine the specifications. The submission of a proposal by the Bidder shall be taken as conclusive evidence of compliance with this requirement.

**5. QUALIFICATION OF BIDDERS**

Bidder shall submit evidence to the City of having a minimum of five years experience in applications of type of coating system specified and shall submit a list of a minimum of five (5) references of projects.

Reference projects and project dates are to be submitted with the Bidder's Proposal.

## 6. INSURANCE

The Contractor shall furnish proof of insurance, before the start of work, establishing minimum coverages as follows:

### Worker's Compensation

Coverage A	Statutory
Coverage B	\$100,000

### Comprehensive General Liability

Per occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products/completed operations General Aggregate	\$1,000,000

### Comprehensive Automobile Liability

Combined Single Limits	\$1,000,000
------------------------	-------------

The City of Escanaba shall be named as "additional insured" on all certificates. All policies affording coverages required in this section shall further be endorsed to provide a ten (10) day notice to be delivered to the City before any coverages are either reduced or cancelled.

## 7. PAYMENTS

Payments shall be made to the successful Bidder/Contractor in one lump sum amount upon 100% completion of the work. The City will retain the bid security deposit until the work is satisfactorily completed. The City reserves the right to withhold an equitable amount for items not completed or unsatisfactory. The successful bidder shall submit waivers of lien from his/her company, sub-contractor, and all materials suppliers.

## 8. TAXES

The successful Bidder/Contractor shall pay all applicable state sales and use taxes if applicable for this project.

## 9. PROTECTION

The successful Bidder/Contractor shall take adequate precautions to prevent existing walks, drives, lawns or landscaped areas and buildings from being damaged. Any damages shall be corrected at the Contractor's expense to the City's satisfaction.

## **10. GUARANTEE**

The successful Bidder/Contractor shall guarantee material and labor for a period of one year from the date of completion of work.

## **11. SAFETY REGULATIONS**

The successful Bidder/Contractor shall conform with the General Safety Rules and Regulations for the Construction Industry as prescribed by the Construction Safety Commission, Department of Labor, Bureau of Safety and Regulations, Lansing, Michigan and the Occupational Safety and Health Standards of the U.S. Department of Labor.

## **12. DISCREPANCIES**

In case of disagreement within the specifications, the better quality or greater quantity of work shall be estimated and the matter drawn to the attention of the City for discussion and/or adjustment.

## **13. PROJECT COORDINATOR**

Thomas J. Penegor  
Recreation Director  
City of Escanaba  
Office: 225 North 21<sup>st</sup> Street (Civic Center)  
Mailing Address: P.O. Box 948, Escanaba, MI 49829  
Phone: (906) 786-4141  
Fax: (906) 789-3798  
e-mail: [recreation@escanaba.org](mailto:recreation@escanaba.org)

# SITE WORK SPECIFICATIONS

All work in this division of the specifications consists of providing re-surfacing to existing exterior tennis courts.

## 1. SCHEDULE

### A. VETERAN'S PARK

LOCATION: Lake Shore Drive and 12<sup>th</sup> Avenue South;  
two (2) tennis court batteries

WORK: Power wash, crack filling, patching, fix 6'x9' bird bath on south court; two (2) coats acrylic re-surfacer, two (2) coats acrylic color and game lines on two (2) existing tennis courts

EXISTING SURFACE: Tennis Courts: Bituminous; Previously color coated and finished

COURT DIMENSIONS: 120' long x 110' wide overall

## 2. COLOR SYSTEM/MATERIALS AND SUPPLIES

### A. Suppliers

Acceptable supplier(s) of the coating materials is listed below. Equal or better alternatives will be allowed.

- (1) Latex-ite Recreational Surfacing Systems by Surfacing Coatings Company, Auburn Hills, MI 48057; or Dura Court by Fahrner Asphalt Sealers, Inc., Plover, WI;
- (2) The successful Bidder/Contractor shall submit material data sheets to verify that the materials used comply with all requirements of the specifications;
- (3) The material shall be delivered to the project site in its original unopened containers clearly labeled with trade name and name of manufacturer;
- (4) Color shall be dark green for court areas.
- (5) Resurfacing material must be environmentally friendly.

## 3. APPLICATION

### A. Cleaning

Clean entire surface area of dirt, foreign material, and any loose or peeled coating. Cleaning will be done by blowing and sweeping. Power washing may be required if courts are silt embedded or coating is peeling. Allow proper time to dry on courts that are power washed.

## B. Patching and Crack Filling

Patching is required where existing surface is loose or peeled. Cracks over 1/2 inch will be leveled with acrylic patch binder. Cracks under 1/2 inch will be leveled with approved crack filler.

## C. Re-Surfacers

Apply two (2) coats

- Between coats, scrape minor imperfections and blow surface clean to insure smooth clean surface.
- Where existing finish appears to be suitable provide one (1) coat of re-surfacer, and please indicate on bid sheet.

## D. Color Coating

(1) Tennis Court:

- Apply two (2) coats of colored finishing coating on courts specified at Ludington Park, Royce Park and the Escanaba High School;
- Clean silica sand shall be added to the first coat to provide a *slow* speed of play and prevent player slipping; and
- One color required – dark green for tennis courts; one color – dark green for basketball courts.

(2) All coating shall be applied only when ambient temperature is at least 55 degrees F and rain is not imminent. Court surfaces shall be dry before application.

## E. Play Lines

For lining of courts, a minimum of four (4) hours shall be allowed for the curing of the color finish system before application. Two inch wide white playing lines shall be accurately located, marked and painted as specified by U.S. Tennis Association for tennis courts.

## F. Clean Up

Upon completion of work, clean all surfaces and remove all materials and debris from the site.

## 4. PROJECT COMPLETION

The successful awarded Contractor may commence work between August 3<sup>rd</sup> and September 11, 2015 within the specifications satisfied. *All work must be completed by Friday, September 11, 2015, if possible.*

## BIDDERS WORKSHEET A

<b>Veteran's Park Tennis Courts</b> <b>A. Two (2) Courts</b>																									
<i>Comments:</i>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Power Washing</td> <td style="width: 5%;"></td> <td style="width: 25%; text-align: right;">\$</td> </tr> <tr> <td>Patching</td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Crack Filling</td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Re-surfacing (circle one)</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">1 Coat      2 Coats</td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Color Coating including</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">2 Coats + Striping</td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td><b>TOTAL – Site A</b></td> <td></td> <td style="text-align: right;"><b>\$</b></td> </tr> </table>	Power Washing		\$	Patching		\$	Crack Filling		\$	Re-surfacing (circle one)			1 Coat      2 Coats		\$	Color Coating including			2 Coats + Striping		\$	<b>TOTAL – Site A</b>		<b>\$</b>
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<b>TOTAL – Site A</b>		<b>\$</b>																							

# BIDDERS PROPOSAL

Date \_\_\_\_\_

City of Escanaba  
Escanaba, MI 49829

Sir or Madam:

We, the undersigned, do hereby agree to furnish materials and labor in conformance with the attached Specifications for the Courts Re-surfacing in the following amounts:

A. Veteran's Park Tennis Courts \$ \_\_\_\_\_  
Two (2) Courts

Certified Check or Bidder Bond  
Enclosed in the amount of \$ \_\_\_\_\_

Project Start Date: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Project References Enclosed:  Yes  No

Materials/Color System to be used: \_\_\_\_\_  
(Name of System/Supplier)

Material Data Sheets Enclosed:  Yes  No

Material Environmentally Friendly  
Sheets Enclosed:  Yes  No

Respectfully submitted,

FIRM'S NAME \_\_\_\_\_

FIRM'S ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

BY \_\_\_\_\_ TITLE: \_\_\_\_\_

FIRM REPRESENTATIVE SIGNATURE \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

BIDDERS PROPOSAL

Date JUNE 5, 2015

City of Escanaba  
Escanaba, MI 49829

Sir or Madam:

We, the undersigned, do hereby agree to furnish materials and labor in conformance with the attached Specifications for the Courts Re-surfacing in the following amounts:

A. Veteran's Park Tennis Courts \$ 9,700.00  
Two (2) Courts

Certified Check or Bidder Bond  
Enclosed in the amount of \$ BID BOND

Project Start Date: AS SOON AS AVAILABLE

Project Completion Date: By SEPT. 11, 2015

Project References Enclosed:  Yes  No

Materials/Color System to be used: MEDIUM GREEN  
NOVA SPORTS  
(Name of System/Supplier)

Material Data Sheets Enclosed:  Yes  No

Material Environmentally Friendly  
Sheets Enclosed:  Yes  No

Joel 920-655-8412

Respectfully submitted,

FIRM'S NAME American Systems of WI, Inc.

FIRM'S ADDRESS P.O. Box 373

CITY Swamico STATE WI ZIP 54173

BY Cynthia Pratsch TITLE: President

FIRM REPRESENTATIVE SIGNATURE Cynthia D Pratsch

PHONE: 920 434 8272 FAX: \_\_\_\_\_ E-MAIL: americsystems@live.com



American Systems of Wisconsin, Inc.  
Specialty Contractor

★ Recreational Construction   ★ Asphalt/Concrete   ★ Landscaping

Tennis Court References

27 849

Munson  
~~92,262~~  
43,585

Wausaukee Club- Tennis Courts 2013  
W10207 County Rd. C  
Athelstan, WI 54104  
Mr. Ken Cramer (715) 856-5211

35mi. south of IM  
3 courts Did good Job  
Skeptical

Minocqua Country Club- Tennis Courts 2013  
9264 Howards Point Rd  
Minocqua, WI 54548  
Mr. John Joyce (312) 648-3606

Like them  
Class act  
very prompt, clean  
professionals

Village of Suamico- Idlewild and Calavera Springs- Tennis Courts 2014  
12781 Velp Ave  
Suamico, WI 54173  
Nikki Hilker (920) 434-8410

## BIDDERS WORKSHEET A

<b>Veteran's Park Tennis Courts</b> <b>A. Two (2) Courts</b>																	
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CITY OF ESCANABA  
RECORD OF BIDS

June 9, 2015  
Veteran's Court Resurfacing Project - Two (2) Courts

NAME OF BIDDER	VETERAN'S TENNIS COURTS	CHECK or BID BOND	START DATE	COMPLETION DATE	REFERENCES YES/NO	MATERIALS/ COLOR SYSTEM	MATERIAL DATA SHEETS YES/NO	ENVIRONMENTAL FRIENDLY YES/NO
American System	9,700.00	Bid Bond	soon as allowable	9-11-15	yes	Med greens New Sports	N/A	N/A
Tennis Court Unlimited	12,250	Bid Bond	8-3-15	8-10-15	yes	Lat-Rold	yes	N/A
Fabrics Aspent	17,627.85	Bid Bond	8-3-15	9-11-15	yes	Lat-Rold	yes	yes

PRESENT: Bob Richards  
Tom Ferguson  
Kimberly Peterson

