City of Marquette, MI

Meeting Agenda
City Commission

Monday, February 27, 2023
6:00 PM
Commission Chambers

300 West Baraga Ave
Marquette, Michigan 49855

Call to Order, Pledge of Allegiance and Roll Call

Approval of the Agenda

Announcements

Boards and Committees

1. Appointment(s)

   Cary Gottlieb, Planning Commission for an unexpired term ending 02-15-2024
   Steven Lawry, Planning Commission for an unexpired term ending 02-15-2026
   Justin Vasseau, Board of Review for an unexpired term ending 02-01-2024

2. Reappointment(s)

   Sarah Bixby, Parks and Recreation Advisory Board for a term ending 01-29-2026
   Joseph Tuccini, Marquette Brownfield Redevelopment Authority for a term ending 02-01-2026

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

3. Consent Agenda

- **3.a.** Approve the minutes of the February 13, 2023 regular Commission meeting
- **3.b.** Approve the total bills payable in the amount of $732,539.00
- **3.c.** Flat HRA Plan Document
- **3.d.** Ordinance 719 - Business Licensing
- **3.e.** Superior Watershed Partnership – Lease Agreement

New Business

4. MiNextCities Grant Agreement
5. Manager and Attorney Compensation

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Comments from the Commission

Comments from the City Manager

Adjournment

Kyle Whitney, City Clerk

If you require assistance to participate in any meeting, program or activity offered by the City of Marquette, please provide advanced notice to City of Marquette ADA Coordinator Eric Stemen at 906-225-8978 or via email at estemen@marquettemi.gov.

Agenda Date: 2/27/2023

Consent Agenda

Approve the minutes of the February 13, 2023 regular Commission meeting

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Feb. 13 Minutes

City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes
City Commission

Monday, February 13, 2023
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Present: Davis, Larson, Mayer, Ottaway, Smith, Stonehouse
Absent: Hanley

Approval of the Agenda

Commissioner Jennifer Smith moved to Approve the agenda as presented, seconded by Commissioner Fred Stonehouse and Carried Unanimously.

Announcements

Mayor Mayer announced that he is recommending City Fire Chief Ian Davis be appointed as the City's representative to the County Dispatch Policy Board. He also noted that the City will be hosting an Open House related to the City Master Plan process this week, scheduled from 4 to 7 p.m. on February 15.

Boards and Committees

1. Appointment(s)

Carole Touchinski, Presque Isle Park Advisory Committee for an unexpired term ending 04-01-23 and a subsequent term ending 04-01-26
Brooke Tharp, Marquette Housing Commission for an unexpired term ending 06-09-24

Commissioner Jennifer Smith moved to Approve the appointments as listed, seconded by Commissioner Jermey Ottaway and Carried Unanimously.

2. Reappointment(s)

Kristina Hill, Board of Zoning Appeals, for a term ending 02-15-26
Jaclyn Stark, Marquette Housing Commission for a term ending 02-12-28
Sarah Mittlefehldt, Planning Commission for a term ending 02-15-26

Mayor Pro Tem Sally Davis moved to Approve the reappointments as listed, seconded by Commissioner Michael Larson and Carried Unanimously.

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Realtor Terry Huffman read a letter from his clients who are hoping to purchase the City-owned property listed on tonight's agenda in order to construct a hotel.
Margaret Brumm spoke in support of the letter of support for the Janzen House, and praised the organization.

Presentation(s)

3. Peter White Public Library Board, by Library Director Andrea Ingmire

Peter White Public Library Director Andrea Ingmire spoke about the myriad projects and efforts organized by the library, and also shared statistics related to the library's programming.

Commissioners thanked Ingmire for the presentation and praised the library's successful programming and on its broad impact in the community.

4. Consent Agenda - Roll Call Vote

Commissioner Fred Stonehouse moved to Approve the Consent Agenda as presented, seconded by Commissioner Jermey Ottaway and Carried Unanimously by Roll Call Vote.

4.a. Approve the minutes of the January 30, 2023 regular Commission meeting

4.b. Approve the total bills payable in the amount of $ 1,283,231.58

4.c. City Manager and City Attorney Compensation Subcommittee

4.d. Letter of Support - Janzen House

4.e. Marquette American Legion Baseball Non-Profit Status - Roll Call Vote

4.f. Marquette Area Public Schools - Ice Contract

4.g. Ordinance 718 - Marihuana Establishment Licensing - Roll Call Vote

4.h. Superior Watershed Partnership– Lease Agreement

4.i. United States Geological Survey - Stream Gage Operating Contract

4.j. U.P. Superior Fastpitch Softball Non-Profit Status - Roll Call Vote

New Business

5. Requests to Purchase City-owned Property - 601 South Lakeshore Boulevard

Commissioner Stonehouse moved to affirm an interest in selling the property for tax creation and to direct the City Manager to further evaluate proposals and present a recommendation to the City Commission. This motion was seconded by Mayor Pro Tem Davis and discussion ensued.

Commissioner Stonehouse said the Commission doesn't need to wait to make this decision until after the Community Master Plan process is completed, and he noted that the Commission will ultimately need to vote to approve any sale. He said tax base is pivotal in a community where so much of the property is currently nontaxable.

Mayor Pro Tem Davis said she thinks the public is nervous about any development near the lake and that any sale should be done carefully. She voiced concerns about building height and traffic patterns and stated a hope that there would remain a buffer along the bike path.

Commissioners discussed the merits of development, the need for an increased tax base and the timeline for a staff evaluation and they considered whether the scope of this evaluation should be expanded. Commissioner Smith voiced an intention to vote against the motion, stating that it would be better to wait for the master planning process to conclude, but also said she believes the public would not be in favor of development at that location.

Commissioner Larson then moved to amend the original motion to direct the manager to also consider other opportunities for the property, including a general RFP process. Commissioner Ottaway seconded the motion, which carried 4-2, with Mayor Pro Tem Davis and Commissioner Smith voting against it.

The commission then voted on the now-amended motion: To affirm an interest in selling the property for tax creation and to direct the City Manager to further evaluate proposals, as well as consider other opportunities for the property, including a general RFP process, and to present a recommendation to the City Commission. This motion carried 5-1, with Commissioner Smith voting against it.

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

There were no public comments at this point.

Comments from the Commission

Commissioner Ottaway said he hopes people come downtown for the UP200 this weekend and he hopes for better weather for the race.

Mayor Pro Tem Davis said she has concern for the parcel discussed tonight because it fronts both the business district and a more rustic portion of the bike path. She hopes those two portions of the parcel remain distinct and separate in the future.

Commissioner Smith said the NTN had a piece of grooming equipment break down recently, and the group could use funding to help replace it.

Commissioner Stonehouse talked about the history of the Founders Landing area and said context and history is important. He said there will be a cruise ship stopping in Marquette again this summer.

Commissioner Larson said he was happy with his first meeting, and he was hoping the City would get as much information as possible to aid in the decision regarding the property discussed tonight.

Mayor Mayer said it's good to see new commissioners joining in on these discussions. He said there is no harm in exploring our options at the property talked about tonight. He said he will be joining City Police Chief Grim for his Coffee with a Cop this month.

Comments from the City Manager

City Manager Karen Kovacs said the City will be closed on Monday Feb. 20, and shared information about the Community Master Planning events coming up this week.

Adjournment

Mayor Mayer adjourned the meeting at 7:06 p.m.

_____ _____

Cody O. Mayer, Mayor **Kyle Whitney, City Clerk**

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Agenda Date: 2/27/2023

Consent Agenda
Flat HRA Plan Document

BACKGROUND:

The City's health insurance plan is comprised of four coverage levels: Core, Buy-Up, Buy-Down and Modified Buy-Down in addition to the coverage types of single, two person or family. The City's employer premium contribution is based on the hard cap amount set annually by Michigan law, and employee premium contributions are determined by our plan underwriter at the amount for each coverage level and type for the cost above the hard cap amount. The Core and Buy-Down plans have the same employer and employee premium amounts; however, because the benefit level is less in the Buy-Down plan, the City of Marquette funds the difference through a Fixed Contribution Health Reimbursement Arrangement Plan (Flat HRA). Ahead of the July 1, 2022 renewal, our health committee, comprised of a representative from each bargaining unit and management, agreed to amend the Flat HRA Plan to allow employees more flexibility to utilize the funds they've accumulated through their membership in the Buy-Down plan once they separate from employment. Previous plan document requirements allowed only for employees with at least 15 years of service or more who were drawing a City pension to spend down their HRA balance post-separation. With the recommended changes, employees who separate for any reason with at least 10 years of service to the City of Marquette will be eligible to spend down this balance post-separation, 10 years being consistent with City pension vesting.

The attached Fixed Contribution Health Reimbursement Arrangement (Flat HRA) Plan Document is effective February 1, 2023. Going forward, this document will be updated annually with an up-to-date Schedule of Benefits in Schedule A, or mid-year if any changes are made to the plan as with this amendment.

FISCAL EFFECT:

None by this action. The City budgets for and pays the State of Michigan hard caps set by law for medical insurance for active employees along with the full cost of vision and dental coverage. Employees are responsible for paying the cost above the hard cap rate as the premium they see deducted per paycheck.

RECOMMENDATION:

Approve the Fixed Contribution Health Reimbursement Arrangement (Flat HRA) Plan Document effective February 1, 2023, and authorize the City Manager or her designee to sign and execute the document.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Flat HRA Plan Document

City of Marquette

Fixed Contribution Health Reimbursement Arrangement Plan, (Flat HRA)

Plan Document

Amended February 01, 2023

City of Marquette
Fixed Contribution Health Reimbursement Arrangement, (Flat HRA) Plan Document
Amended February 01, 2023

Plan Purpose

The name of this plan is Fixed Contribution Health Reimbursement Arrangement Plan, established by the employer, City of Marquette, whose address is 300 West Baraga Avenue, Marquette MI 49855. For more information on the Plan Sponsor, see Administrative Facts section. The effective date of this Plan is Sunday, July 01, 2012.

City of Marquette hereby establishes the City of Marquette Fixed Contribution Health Reimbursement Arrangement (HRA) Plan (the Plan) effective, Sunday, July 01, 2012. This Plan is integrated with the City of Marquette High-Deductible Health Coverage Plan (the HDHC Plan) and shall be administered accordingly. Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Section I.

The purpose of the Plan is to allow employees of the Employer to pay for medical services not otherwise reimbursed or reimbursable in full by any other accident or health plan and such reimbursements are intended to be eligible for exclusion from participants' gross income under Code §105(b). This plan is intended to be an employer-provided medical reimbursement plan under Code §105 and §106 and regulations issued thereunder, and to satisfy the minimum value method of integration described in IRS Notice 2013-54 and DOL Tech Rel. 2013-3, through integration with the HDHC Plan. This Plan and the HDHC Plan shall be interpreted to accomplish these objectives.

This Fixed Contribution Health Reimbursement Arrangement Plan is replacing the City of Marquette Fixed Contribution Health Reimbursement Plan that was effective February 01, 2010.

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Section I

Definitions

The following words and phrases as used herein shall have the following meanings, unless a different meaning is plainly required by the context. Pronouns shall be interpreted so that the masculine pronoun shall include the feminine and the singular shall include the plural, and the following shall apply in reading this instrument:

"Affiliated Company" means:

A. Any corporation which is a member of a controlled group of corporations including those within the meaning of section 1563(a) and 414(b) of the Code, determined without regard to sections 1563(a)(4) and (e)(3)(C), including the Employer;

B. Any organization under common control with the Employer within the meaning of section 414(c) of the Code;

C. Any organization which is included with the Employer in an affiliated service group within the meaning of section 414(m) of the Code; or

D. Any other entity required to be aggregated with the Employer pursuant to regulations under section 414(o) of the Code.

"Benefit Credits" means:

The amounts set-aside for Benefits under Section 3 and credited to the Participant's Fixed Contribution Health Reimbursement Arrangement account.

"**Benefits**" **means:**

The reimbursements for medical care expenses under the Plan, as set forth in this Plan.

"**Board**" **means:**

The Marquette City Commission.

"Change in Status" means:

A. A change in a participant's legal marital status, including marriage, divorce, legal separation, annulment, or death of the participant's spouse.

B. An event affecting the number of the participant's dependents, including birth, death, adoption, and placement for adoption.

C. A change in employment status of the participant, his spouse or dependents, including termination or commencement of employment (as determined under the Code Section 125 regulations); a strike or lockout; a commencement of or return from an unpaid leave of absence; a change in worksite; or a change in the employment status of the participant, his spouse or dependent (e.g., hourly to salary, union to non-union, or full-time to part-time), that affects that person's rights under this Plan or an underlying benefit program (e.g., changing from salaried to hourly-paid, union to non-union or part-time from full-time).

D. An event that causes a participant's dependent to satisfy or cease to satisfy the eligibility requirements for a particular benefit, such as attaining a specified age.

E. A change in the residence of the participant, his spouse or dependent.

F. The participant's or dependent's coverage under a Medicaid plan or under a state children's health insurance program is terminated as a result of loss of eligibility for such coverage and the participant requests coverage under the group health plan not later than 60 days after the date of termination of such coverage.

G. The participant or dependent becomes eligible for state premium assistance subsidy from a Medicaid plan or through a state children's health insurance program with respect to coverage under the group health plan and the participant requests coverage under the group health plan not later than 60 days after the date the participant or dependent is determined to be eligible for such assistance.

H. Any other events included under Code Section 125, or regulations or other guidance promulgated there under relating to changes in family status. The determination of whether there is a Change in Status shall be determined by the Plan Administrator in its sole discretion, consistent with the regulations under Code Section 125.

"COBRA" means:
The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Code" means:
The Internal Revenue Code of 1986, and the same as may be amended from time to time.

"Committee" means:
The individuals who may be appointed by the Plan Administrator to administer the process of claims review for the Plan in accordance with Section 4.

"Dependent" means:
(a) A dependent as defined in Code §105(b), (b) any child (as defined in Code §152(f)(1)) of the participant who as of the end of the taxable year has not attained age 27, and (c) any child of the participant to whom IRS Revenue Procedure 2008-48 applies (regarding certain children of divorced or separated parents who receive more than half of their support for the calendar year from one or both parents and are in the custody of one or both parents for more than half of the calendar year). Notwithstanding the foregoing, the Flat HRA Account will provide benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "dependent".

"Effective Date" means:
Monday, February 01, 2010.

"Electronic Protected Health Information":

Has the meaning described in 45 CFR §160.103 and generally includes Protected Health Information that is transmitted by electronic media or maintained in electronic media. Unless otherwise specifically noted, Electronic Protected Health Information shall not include enrollment/disenrollment information and summary health information.

“Eligible Employee” means:

Any employee who meets the eligibility requirement set forth: Any full-time employee who is enrolled in the City’s HDHC plan and also in the Buy-Down option are eligible for this plan. Active employees enrolled in the modified Buy-Down are not eligible for benefit credits in this plan. Seasonal, temporary, or part-time employees who work less than 30 hours per week are ineligible for this Plan. All employees who have not reached the 1st of the month following their date of hire are ineligible for this Plan. Former employees who have not completed 10 years of service are not allowed in this Plan.

Retired employees who have completed 10 years of service are eligible for the plan but will receive no additional benefit credits to the Fixed Contribution Health Reimbursement Account after the date of retirement. Eligible retired employees may continue to submit expenses to exhaust (see "spend down") their remaining balance as long as they continue to pay their monthly administrative fee associated with the Flat HRA, deducted from their remaining funds on a monthly basis.

Former employees who have completed 10 years of service are eligible for the plan but will receive no additional benefit credits to the Fixed Contribution Health Reimbursement Account after the date of termination. Eligible former employees may continue to submit expenses to exhaust (see "spend down") their remaining balance as long as they continue to pay their monthly administrative fee associated with the Flat HRA, deducted from their remaining funds on a monthly basis.

Active employees who enroll in a plan other than the City’s HDHC Plan with the Buy-down option will receive no additional benefit credits to the Fixed Contribution Health Reimbursement Arrangement. Active employees not enrolled in the Buy-down plan who were previously enrolled in the Buy-down plan and have remaining benefit credits, may continue to submit expenses to exhaust (see “spend down”) their remaining balance as long as they continue to pay their monthly administrative fee associated with the Flat HRA, deducted from their remaining funds on a monthly basis.

“Eligible Medical Expense”:

(See “Expense” below.)

“Employee” means:

An individual whom the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code §414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period

during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any self-employed individual; (d) any partner in a partnership; (e) any more-than-2% shareholder in a Subchapter S corporation, including those deemed to be a more-than-2% shareholder by virtue of the Code §318 ownership attribution rules; (f) independent contractors; (g) elected officials; and (h) seasonal employees who work less than 6 months per year.

“Employer” means:

City of Marquette which succeeds to its business and elects to continue this Plan, which adopts this Plan with the consent of the Board.

"Employment Commencement Date" means:

The first regularly scheduled working day on which the employee first performs an hour of service for the Employer for compensation.

“Enrollment Form" means:

The form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan. The form may be in electronic format.

“Enrollment Period” means:

The period upon becoming an eligible employee. In addition, the Plan Administrator has specified another acceptable enrollment period, which is open enrollment during the month prior to the plan anniversary or upon becoming an eligible employee.

“Entry Date” means:

The first pay-period following eligibility. Additional entry date(s) include(s) first day of month following date of hire.

“Expense” means:

Any amount incurred by a participant or his or her spouse or dependents for medical services, as defined in Code §213 (including, for example, amounts for certain hospital and doctor bills) only to the extent that the participant or other individual incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the HDHC Plan, other insurance, or any other accident or health plan. If only a portion of a medical care expense has been reimbursed elsewhere (e.g., because the HDHC Plan imposes co-payment or deductible limitations), the Flat HRA Account may reimburse the remaining portion of such expense. A medical care expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Medical care expenses incurred before a participant first becomes covered by the Plan are not eligible. "Eligible Medical Expenses" shall not include (1) health insurance premiums for individual policies or for any other group health plan (including the HDHC Plan); (2) unprescribed medicines or drugs (other than insulin), without regard

to whether such medicine or drug could be obtained without a prescription. The Plan Administrator shall have sole discretion to determine, on a uniform and consistent basis, whether a particular item is a medicine or drug subject to this rule and whether the requirement of a prescription has been satisfied. Please refer to “Schedule A” for medical care expenses eligible under this plan.

"FMLA" means:
The Family and Medical Leave Act of 1993, as amended.

"HDHC Plan" means:
The City of Marquette High-Deductible Health Coverage Plan.

“Highly Compensated Employee” means:
An individual defined under Code §105(h), as amended, as a "highly compensated individual."

“HIPAA” means:
The Health Insurance Portability and Accountability Act of 1996, which may be modified or amended at any time.

“Key Employee” means:
Any employee defined as such in section 416(i)(1) of the Code.

“**Maximum Benefit**” **means:**
The yearly maximum benefit.

“**Participant**” **means:**
Any eligible employee who has met the conditions for participation set forth in Section 2, below.

“**Participating Employer**” **means:**
The employer and any affiliated company, which adopts this Plan with the consent of the board.

“**Plan**” **means:**
The Fixed Contribution Health Reimbursement Arrangement Plan described herein and as amended from time to time.

“**Plan Year**” **means:**
The Plan Year will begin Friday, July 01, 2022 and ends Friday, June 30, 2023. The subsequent Plan Year will begin Saturday, July 01, 2023 and each July 1 thereafter.

“**Qualified Benefits**” **means:**
Each reimbursement for medical services, as described in the document.

“**Qualified Medical Services**” **means**:
Means a medical service that is considered to be medically necessary or prescribed by a licensed practitioner is eligible which was not reimbursed or not reimbursable by any other medical benefit plan, to the extent available to the participant, and includes

only those medical services that are reimbursable by the employer's other plans providing coverage for medical services. If coverage is provided by this plan and under an accident and health plan providing similar benefits, the benefits of this plan must be paid first from this plan until all benefit credits are exhausted, and then from any other available accident and health plan. The eligible medical services must be supported by adequate evidence of the incurring of such and submitted to the employer by the participant or his legal representative. The determination of the qualification of the medical service and the determination of the completeness of submitted request for reimbursement will rest solely on the employer or person or persons appointed to review all claims. The consequent employer's decision will be final.

"**Reimbursement**" **means:**

The actual transfer of benefit credits available to a Plan participant in the Flat HRA account, by the Employer, for payment of qualified medical services. The reimbursement will be in the form of a check drawn on the funds of the Employer, or in any other form as determined by the Employer.

"**Retirement**" **means:**

The voluntary withdrawal of active employment with the Employer after attaining the minimum retirement age and years of service.

"Spend Down" means:

Allowing active employees with remaining account balances no longer enrolled in the City's HDHC with Buy-Down plan and retirees or terminated employees with vested accounts, while participating in the Plan, to continue to receive reimbursements from the Plan until their unused account balance has been exhausted. Monthly administrative fees are deducted from remaining funds.

"**Spouse**" **(as used in this Plan) means:**

An individual who is treated as a spouse for federal tax purposes.

"**Suspension Election Form**" **means:**

The form provided by the Plan Administrator for the purpose of allowing a participant to suspend his or her Flat HRA account for a Plan Year.

"Vested" means:

Unused benefit credits in an Active Employee not enrolled in the City's HDHC plan with Buy-Down option, a Retiree or a terminated Participant's Flat HRA account qualify for spend down. Retiree or terminated Participants must have completed at least 10 years of employment with the City of Marquette in order to be vested.

Section II

Participation in the Plan

Commencement of Participation

Each eligible employee shall be eligible to become a participant on his entry date.

Procedure for and Effect of Participation

An eligible employee may become a participant in the Plan by executing and submitting a properly completed enrollment form, available from the Employer or Plan Administrator and by providing such data as is reasonably required by the Employer as a condition of such participation. The enrollment form shall identify the spouse and dependents, whose medical care expenses may be submitted to the Flat HRA. The participant must notify the administrator within 30 days if this information changes. Each individual shall for all purposes be deemed conclusively to have consented to the provisions of the Plan and all amendments thereto.

Election to Suspend Flat HRA Account

A participant may elect to suspend his or her Flat HRA account for any future Plan Year by submitting a suspension election Form to the administrator before the beginning of that Plan Year. The participant's suspension election will remain in effect for the entire Plan Year to which it applies, and the participant may not modify or revoke the election during that Plan Year. The participant will not receive reimbursements for any medical care expenses incurred during the Plan Year to which the suspension election applies.

If a participant suspends his or her Flat HRA account for a Plan Year, the Employer will suspend contributions to the Flat HRA Account for that Plan Year. Medical care expenses incurred before the beginning of the suspended Plan Year will be reimbursed during the suspended Plan Year, subject to the reimbursement procedures set forth in this plan, so long as no suspension election was in effect for the Plan Year in which such expenses were incurred.

Permanent Opt-Out

In lieu of a temporary suspension of a participant’s Flat HRA account, a participant may elect to permanently opt out of and waive future reimbursements from his or her Flat HRA Account. A participant who makes that election will not receive reimbursements for any medical care expenses incurred after the opt-out election takes effect. Medical care expenses incurred before the opt-out election takes effect, however, may be reimbursed during the first Plan Year to which the opt-out election applies, subject to the reimbursement procedures set forth in this plan, so long as no suspension election was in effect for the Plan Year in which such expenses were incurred.

If a participant permanently opts out of this Plan, the Employer will also discontinue contributions to the participant's Flat HRA account and the participant will have no opportunity to resume participation in the current plan year or any future plan years.

The opportunity to make a permanent opt-out election shall be offered to each participant at least annually. No similar offer shall be required at termination of employment because in that case the reimbursements are limited as outlined in Section III, Reimbursements.

Cessation of Participation

A participant will cease to be a participant as of the earlier of:

A. the date on which the Plan terminates;

B. the date on which he ceases to be an eligible employee because of a loss of coverage under the HDHC;

C. the date on which he fails to satisfy any requirement necessary to be an eligible employee other than coverage under the HDHC Plan, provided that an employee's participation may continue for purposes of COBRA coverage, as may be permitted by the administrator on a uniform and consistent basis;

D. the date on which a Participant on Spend Down has exhausted their balance;

E. the date on which a participating employer terminates its participation in the Plan.

Once the eligible employee is enrolled as a participant, his or her participation will continue until his or her participation ceases pursuant to the above or the participant elects to suspend or permanently opt-out. If a plan participant fails to complete an election form for the upcoming Plan year, then the participant will be automatically enrolled in the Core for the full Plan year.

Nothing in this section shall prohibit the payment of benefits with respect to claims arising prior to the participant's termination of participation, so long as no suspension election or permanent opt-out was in effect for the Plan Year in which such expenses were incurred.

Change in Enrollment

An eligible employee, who is not enrolled, may complete an enrollment form in connection with a change of status:

When a significant coverage is no longer available resulting in a loss of coverage under this Plan, a participant may change to another benefit option, if available, or cease enrollment.

Participants may make a change in benefit options that corresponds with changes made under an accident and health plan of the spouse's or dependent's employer including changes made under a domestic partner's Plan, or the Plan of the employee's Employer. The change request must be combined with adequate documentation describing the change in coverage for which the participant, dependent, or domestic partner is covered.

Participants may make a change in coverage to add self or dependent that loses coverage under a health plan maintained or administered by a government or educational institution.

Notwithstanding the foregoing, a former participant who continues to receive compensation from the Employer shall remain a participant for all purposes until such compensation ceases.

Section III

Benefits

Benefit Credits

There shall be credited to each participant's Flat HRA account those benefit credits that correspond to the amount of the Employer's funding for the complete Plan Year or for such partial Plan Year, as shown by the amounts set forth on Schedule A attached hereto, and as may be revised by the Employer from time to time. The amount of benefits actually provided to or for the benefit of any participant shall be a charge to the balance of his Flat HRA account.

Election of Benefits

A participant will select between the three optional benefit Plan tiers of coverage: a.) Single employee only, b.) Two Person c.) Family benefits. Selection of the proper option will be completed on the enrollment form.

Coordination of Benefits

The Flat HRA may only pay eligible medical expenses not previously reimbursed or for which you will not seek reimbursement from any other accident or health plan, cafeteria plan, or health insurance. If an eligible medical expense is payable or reimbursable from another source, that other source must pay or reimburse prior to payment or reimbursement from the Flat HRA. If only a portion of an eligible medical expense is reimbursable by another health plan (e.g., because of copayment or deductible requirements), the Flat HRA can reimburse the remaining portion of the expense if it otherwise meets the requirements of the Flat HRA. However, if eligible medical expenses are covered by both Flat HRA and by a health flexible spending account (health FSA), the Flat HRA will pay first, exhausting all available Flat HRA Credits, before the health FSA may provide reimbursement.

Nature of Participant Fixed Contribution Health Reimbursement Arrangement account

No money shall actually be allocated to any reimbursement account; any such reimbursement account shall be of a memorandum nature, maintained by the Plan Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to a Flat HRA account.

Provision of Benefits

The employer shall provide such benefits as the participant has elected under the Plan, in such amounts as do not exceed the amount indicated on the Schedule A of this Plan, and subject to employer contributions from time to time. Such benefits shall be subject to the provisions of this Plan, the Summary Plan Description, contract, or other arrangement setting forth the further terms and conditions pursuant to which such benefits are provided. No amount shall be applied to provide benefits under this Plan if such amount would exceed the balance of the participant's benefit credits in the Flat HRA account.

Contributions

Your Flat HRA account will be credited pro-rata each bi-weekly pay period with an amount equal to the applicable maximum dollar limit for the period of coverage divided by the number of weeks in that period of coverage. Benefits shall be available during the period of coverage based on the accumulated account balance as credited each pay period, increased by any carryover of unused Flat HRA account balance from a prior period(s) of coverage.

Qualified Expenses

Means the medical expenses incurred during the period of coverage by you, spouse, or your eligible dependents while you remain a participant. For purposes of the Plan, an expense is incurred on the date when the underlying service(s) giving rise to the medical expense(s) is/are performed and not on the date that the service(s) is/are billed by the service- provider or paid by the participant.

Reimbursement of Medicines and Drugs Sold Lawfully Without a Prescription

Notwithstanding any other provisions in the Plan to the contrary, medicines or drugs that are sold lawfully without a prescription need not be prescribed to qualify as Medical Care Expenses reimbursable under the Plan's Health FSA Component if the expenses for these items are incurred on or after January 1, 2020. In addition, expenses for menstrual care products incurred by a Participant or his or her Spouse or Dependents on or after January 1, 2020, shall qualify as Medical Care Expenses. For this purpose, menstrual care product means a tampon, pad, liner, cup, sponge, or similar product used by individuals with respect to menstruation or other genital-tract secretions.

Reimbursement Rate

The Plan reimburses at a rate of 100% for each qualified medical expense that is incurred.

Available Amount

The amount available for reimbursement of qualified expenses is the amount credited to the participant’s Flat HRA account reduced by prior reimbursements.

Eligible Retired Employees

Eligible retired employees will receive no additional benefit credits to the Flat HRA account after the date of retirement. Eligible retired employees will be allowed to continue to submit expenses to exhaust their remaining balance provided they have completed 10 years of employment with the City of Marquette. The retiree will be responsible for paying the monthly administration fee associated with their Flat HRA.

Unqualified Expenses

Health insurance premiums for any other plan (including a plan sponsored by the Employer). (Notwithstanding the forgoing, the Flat HRA Account may reimburse COBRA premiums that a participant pays on an after-tax basis under any other group health plan sponsored by the Employer).

Carryover of Accounts

If the employee who has been a participant in the Plan, enrolls in a different Employer health plan during open enrollment that does not have a Flat HRA account, the employee will have two options for any remaining balance in his account for the remainder of the Plan Year. The employee may elect to suspend his balance for the Plan Year (see Section 2 – Election to Suspend Account) or he may continue to spend down the balance in his Flat HRA as long as the proper application and authorization to deduct administrative fees is completed. This authorization will be valid for the remainder of the Plan Year or until the balance in the account is exhausted, whichever occurs first.

Additional Benefits

If at the end of any Plan Year where there remains any unused benefit credits to the participant's Flat HRA account, and the participation of the participant continues to be enrolled in the Plan, such benefit credits will be carried forward into the following Plan Year and may be used to pay for covered expenses incurred in a subsequent period of coverage. The reimbursements will be charged against the remaining benefit credits. In addition, any Flat HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the run-out period of the Plan Year in which the medical care expense was incurred, shall be forfeited.

Revocation and Modification of Elections

A. Once an eligible employee has elected benefits under the plan and the plan year has begun, he may not amend or revoke his election of benefits, unless there is a change in status or as may otherwise be permitted under this Section 3. The revocation of a designation of Benefits and election of new benefits may be made by an eligible employee only if both the revocation of existing designation of benefits and election of new benefits are made on account of and consistent with the previously described change in status (except for coverage under COBRA as defined in Section 5.)

B. Change in coverage.

A participant may make a prospective election change that is on account of and corresponds with a change made under the plan of the employer of the participant's spouse, former spouse, or dependent's employer, if (a) the accident and health plan in which the spouse, former spouse, or dependent participates permits its participants to make an election change that would be permitted under Treasury regulation Section 1.125-4(b) through (g); or (b) the participant's plan year period of coverage is different from the plan year period of coverage under the cafeteria plan or benefit plan of the plan in which the spouse, former spouse or dependent participates.

Where there is a judgment, decree, or order (including a qualified medical child support order (QMCSO) ("Order") resulting from a participant's divorce, annulment, legal separation, or change in custody, (a) a participant's election under this Plan may be changed to provide coverage for a dependent who is the participant's child if the order requires such coverage, and (b) coverage of the

dependent who is the participant's child may be revoked or changed if the Order requires someone other than the participant to provide such coverage.

If a participant, his spouse or dependent is entitled to special enrollment rights under a group health plan, as required by Code Sec. 9801(f) (i.e., HIPAA), then a participant may revoke a prior election for coverage under this Plan and make a new election, provided that the election corresponds with such special enrollment rights under the group health plan.

A participant entitled to make a new election under this Section 3 must do so within 30 days of the event or within 60 days of the change of status events (f) & (g) outlined in Section 1 above. Any such election shall apply for the balance of the Plan Year in which the election is made unless a subsequent event (described in this Section 3) occurs.

Reimbursements

Except as otherwise provided in this plan, contract or arrangement established to provide benefits of this Plan, reimbursement of expenses shall be made at such time and in such amounts as are evidenced by submitted proof of incurring an eligible medical expense by the Employer or by any administrator appointed by the Employer, provided sufficient benefit credits are available in the account of the participant. No payment may be made for any medical expense incurred by the participant before the participant's effective date of coverage or incurred on or after the date of actual termination of participation. However, a terminated participant (or the participant's estate) may claim reimbursement for any eligible medical expenses incurred during the period from the beginning of the calendar year through the date of termination of participation, provided that the participant (or the participant's estate) files a claim within 90 days of the termination. Any reimbursements from the Flat HRA Account for eligible medical expenses incurred after the date of termination will be made pursuant to an account being vested allowing for spend down or a COBRA election. Provisions for reimbursement of expenses by the Employer will be determined by the Employer who is the sole source of payment of benefits.

If a Participant in the Plan described by this Plan Document also participates, during the current Plan Year, in a Flexible Medical Spending Account (FSA) via a Flexible Benefit Plan, sanctioned by Section 125 of the Internal Revenue Code, and the funds available for claim payment elected in the FSA are exhausted, expenses claimed against the FSA may instead be claimed against the Fixed Contribution Health Reimbursement Arrangement (Flat HRA) described in this document, if it has available funds.

Nondiscrimination

Benefits under the Plan shall not discriminate in favor of highly compensated employees nor shall the aggregate cost of the benefits provided to key employees exceed 25% of the aggregate of such cost for the benefits provided to all employees under the Plan. The Employer may limit or deny any employee's participation in the Plan to the extent necessary to avoid any such discrimination due to actuarial error in rate calculation. This calculation shall be the property of and retained by the appropriate participating Employer.

Termination of Employment

An employee who retires during a Plan Year in which he participates in this Plan may continue to be an active participant in the Plan provided they have completed 10 years of employment with the City of Marquette. Eligible retired employees will be allowed to continue to submit expenses to exhaust their remaining balance but will receive no additional benefit credits to their Flat HRA account after retirement. The retiree will be responsible for paying the monthly administration fee associated with their Flat HRA.

Employer elects to allow continuation of any participant upon termination of employment. COBRA Continuation is available for such participant.

An employee who terminates during a Plan Year in which he participates in this Plan may continue to be an active participant in the Plan provided they have completed 10 years of employment with the City of Marquette. Eligible terminated employees will be allowed to submit expenses to exhaust their remaining balance but will receive not additional benefit credits to their Flat HRA account after termination. The terminated employee will be responsible for paying the monthly administration fee associated with their Flat HRA.

Employer elects not to allow continuation of any participant upon termination of employment that has not completed 10 years of employment. COBRA Continuation is available for such participant.

Forfeiture

Unless an account is vested allowing for spend down or COBRA is elected, if the total benefit credits paid or reimbursed to a participant with respect to any Plan Year are less than the benefit credits allocated, the unused portion shall be forfeited 90 days following an employee's date of termination of employment.

Participation Following Termination of Employment or Loss of Eligibility

If a participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days of the date of the termination of employment, the resulting break in employment will be disregarded for purposes of determining whether the employee is an eligible employee, and the rehired employee will be reinstated with a Flat HRA contribution amount based on enrollment level, provided the individual is enrolled in the HDHC Plan and meets the other requirements to be an eligible employee (disregarding the break in employment). Participants with 10 or more years of service prior to termination rehired within 30 days that do not meet the requirements to receive additional contributions may continue to receive reimbursements from the Plan until their unused account balance has been exhausted.

If an employee (whether or not a participant) terminates employment and is not rehired within 30 days or ceases to be an eligible employee for any other reason for more than 30 days (including, but not limited to, a reduction in hours or loss of HDHC Plan coverage), the employee's service before his or her loss of eligible employee status will not be taken into account when determining whether the employee has regained eligible employee status, so the employee will be required to complete the

waiting period before again becoming eligible to receive contributions in the Plan, provided the individual is enrolled in the HDHC Plan and meets the other requirements to be an eligible employee. During the waiting period, eligible Participants with spend down accounts may continue to receive reimbursements from the Plan until their unused account balance has been exhausted. Eligible Participants rehired beyond 30 days from termination that do not meet the requirements to receive additional contributions may continue to receive reimbursements from the Plan until their unused account balance has been exhausted provided their account was vested at termination.

Participation While on FMLA Leave

A participant who takes a paid or unpaid leave of absence under the Family and Medical Leave Act of 1993 ("FMLA Leave") may continue participation in this Plan. A participant who elects to continue participation under this Plan shall be responsible for paying the premium on a schedule agreed to by the employer during the period of the FMLA leave. The Employer will provide such benefit credits that would normally be provided to such participant during the FMLA leave. The Plan Administrator shall determine the manner in which such benefit credits are applied to the participant's account in its sole discretion.

Uniformed Service under USERRA

A participant who is absent from employment with the Employer on account of being in "uniformed service", as that term is defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), will continue participation in the Plan. The coverage period shall extend for the lesser of 24 months or until the participant fails to apply for reinstatement or to return to employment with the Employer. Benefit credits remaining at the time active employment ceases may be used as provided in the Plan except that no qualified medical expense will be considered for reimbursement when the cost of the medical service was available for payment or coverage by any other accident and health plan to which the participant is entitled. All unused benefit credits remaining in the Flat HRA account will be held in the account until such time as the employee returns to active employment, and then be available for reimbursement for qualified medical expense. If such participant returns to active employment before the expiration of the 24-month period indicated above, the participant will be reinstated, provided the former participant also is reinstated in the Employer's accident and health plan concurrently, and in the same manner as existed before the USERRA commenced. The Employer will provide such benefit credits that would normally be provided to such participant during the remainder of the current Plan Year. The Employer or Plan Administrator shall determine the manner in which such benefit credits are applied to the participant's account in its sole discretion.

Non-FMLA and Non-USERRA Leaves of Absence

If a Participant goes on a paid or unpaid leave of absence that does not affect eligibility, the Employer will continue to maintain the Participant's Benefits on the same terms and conditions as if the Participant were still an active Eligible Employee for a period of up to one year. If a Participant goes on a paid or unpaid leave of

absence that does affect eligibility, the Participant will be treated as having terminated participation, and COBRA will be offered.

Claims Appeals

Participants have a right to appeal claim payment determinations. If Participants disagree with any claim payment determination, then said Participant must submit proof that a claim for benefits is covered and payable under the Plan's provisions; including (a) all facts and theories supporting the claim, and (b) a statement within the referenced Plan provision. If the participant does so, it may be that some or the entire claim will be payable under the Plan. This Plan allows for two appeals of an adverse benefit determination. Each appeal provides full and fair review of an adverse determination. Participant will be provided free of charge with a complete description of the Plan's review procedures and the applicable time limits by contacting the Plan Administrator. Briefly, the claimant may file an appeal within 180 days following receipt of this notice, which must be in writing and addressed as follows: 44North, 1406 N. Mitchell Street, Cadillac, MI 49601, Attn: Claims Appeals. If participant provides the Plan with all information needed to address the appeal, the Plan will respond to the appeal not later than 60 days after receipt of the appeal. Participants are entitled to receive, free of charge upon request, reasonable access to, and copies of, all documents, records and other information relevant to a claim for benefits. If Participants receive an adverse benefit determination following the final appeal, Participants have the right to bring a civil action. An external review process shall be provided as legally required.

Section IV

Administration

Enrollment

An eligible employee may request Participation in the Plan by completing the Enrollment Form supplied by the Employer or Plan Administrator. No eligible employee may enroll in this Plan unless and until he concurrently enrolls at the same time, in the Employer's accident and health plan.

Administrator

The Employer shall be the Plan Administrator.

Plan Year

The Plan Year will begin Friday, July 01, 2022 and ends Friday, June 30, 2023. The subsequent Plan Year will begin Saturday, July 01, 2023 and every July 1 thereafter.

Name of Plan and Employer Plan Identification Numbers

The name of this Plan is the City of Marquette Fixed Contribution Health Reimbursement Arrangement Plan.

The Employer Identification Number (EIN) assigned to the City of Marquette by the Internal Revenue Service (IRS) is 38-6004521. The Plan Number (PN) assigned to the Plan by the Employer is 502.

Service of Legal Process

The Employer has designated the Plan Administrator as its agent for service of legal process in connection with claims under the Plan. Such process may be served on the Employer by directing the process to the Plan Administrator indicated above.

Classification and Funding

The Plan is intended to be a Fixed Contribution Health Reimbursement Arrangement as defined under IRS Notice 2002-45. The medical care expenses reimbursed under the Plan are intended to be eligible for exclusion from participant's gross income under Code §105(b). This Plan is intended to be an employer-provided medical reimbursement plan under Code §§105 and 106 and regulations issued thereunder, and to satisfy the minimum value method of integration described in IRS Notice 2013-54 and DOL Tech. Rel. 2013-3, through integration with the HDHC Plan. This Plan and the HDHC Plan shall be interpreted to accomplish these objectives.

The Employer funds the full amount of the Flat HRA accounts. There are no participant contributions for benefits under the Plan, except as provided in the case of COBRA coverage. Under no circumstances will the benefits be funded with salary reduction contributions, employee contributions (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions or employer contributions be treated as employee contributions to the Plan.

The benefits provided under the Fixed Contribution Health Reimbursement Arrangement Plan are not insured. In the event the Plan or Plan Sponsor does not pay medical expenses that are eligible for payment under the plan for any reason, the participant may be responsible for the expenses.

Third-Party Administrator

The Plan may from time to time employ the services of a Third-Party Administrator (TPA) for designated Plan administration, or other qualified professionals for Plan services, under the direction of the Plan Administrator.

The Plan has contracted with a TPA to administer benefits and process claims. The TPA merely processes claims and does not ensure that any medical expenses of individuals covered by the Plan will be paid. Complete and proper claims for benefits made by participants covered by the Plan will be promptly processed; however, in the event there are delays in processing claims, plan participants have no greater rights to interest or other remedies against the TPA except those permitted by law.

Named Fiduciary

The Employer shall be the named fiduciary responsible for administration of the Plan. The Employer may, however, delegate any of its powers or duties under the Plan in writing to any person or entity. The delegate shall become the fiduciary for only that part of the administration, which has been delegated by the Employer, and any references to the Employer shall instead apply to the delegate. However, if the Employer assigns any of the Employer's responsibility to an employee, it will not be considered a delegation of Employer responsibility but rather how the Employer internally is assigning responsibility.

Rules of Administration

The Plan Administrator is charged with the administration of the Plan and has certain discretionary authority with respect to the administration of the Plan. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them. The Plan Administrator has the discretionary authority to construe and interpret the Plan in order to make eligibility and benefit determinations as it may determine in its sole discretion. The Plan Administrator also has the discretionary authority to make factual determinations as to whether any individual is entitled to receive any benefits under the Plan. The Plan Administrator shall adopt such rules for administration of the Plan as it considers desirable, provided they do not conflict with the Plan, and may construe the Plan, correct defects, supply omissions and reconcile inconsistencies to the extent necessary to effectuate the Plan, and such action shall be conclusive. The Plan Administrator shall prescribe procedures to be followed and the forms to be used by employees and participants to enroll and submit claims pursuant to this Plan and has the authority to request and receive from all employees and participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan. Records of administration of the Plan shall be kept, and participants and their beneficiaries may examine records pertaining directly to themselves.

Services to the Plan

The Employer may contract for legal, actuarial, investment advisory, medical accounting, clerical and other services to carry out the provisions of the Plan. The costs of such services and other administrative expenses shall be paid by the Employer.

Funding Policy

Each participant's benefits under the Plan shall be paid from Employer's general assets. Nothing in the Plan shall be construed to require Employer or the Plan Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no other trust or other fund from which benefits are paid. The Employer will make available 1/12th of the annual benefit times the number of remaining months in the Plan Year for single and family coverage elections by employees.

Claims Procedure

A. To receive benefits under the Plan, a participant must submit a written claim for benefits to the Plan Administrator no later than 90 days following the close of the Plan Year in which the medical care expense was incurred (except that for a participant who ceases to be eligible to participate, this must be done no later than 90 days after that eligibility ceases). Third Party documentation submitted with the claim must set forth:

- The individual(s) on whose behalf medical care expenses have been incurred;
- The date the medical care expenses were incured;
- The type of medical care;
- The name of the provider of the medical care;
- The amount of the service and reimburse amount;
- Other such details about the expenses that may be requested by the Plan Administrator in the reimbursement request form or otherwise (e.g., a statement from a medical practitioner that the expense is to treat a specific medical condition)

B. For purposes of the claims procedure, the Employer will assign a person or a committee, to be the Claims Administrator. The Claims Administrator will review the claim and will advise the participant of any benefit to which he is entitled.

If a participant believes he has not been reimbursed in accordance with the Plan or has not been advised of his benefits, he may submit a written request to the Plan Administrator to provide either an explanation of how benefits are reimbursed or further information of his benefits. The Plan Administrator must respond to such a request within a reasonable time. Additionally, the Plan Administrator will provide to every claimant, who is denied a claim for benefits, a written notice stating in a format determined to be understood by the claimant:

(i) the specific reason or reasons for the denial;

(ii) specific reference to pertinent Plan provisions on which the denial is based;

(iii) a description of any additional material or information necessary for the claimant to perfect the claim, and an exPlanation of why such material or information is necessary; and

(iv) an explanation of the claim review procedure set forth in Paragraph C., below.

Such notice will be given within 30 days after the claim is received by the Claim Administrator (or within 45 days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial 30-day period). If such notification is not given within such period, the claims will be considered denied as of the last day of such period, and such person may then request a review of his claim, as set forth in subsection C., below.

C. Within 180 days of receipt by a claimant of a notice denying a claim under Paragraph A., the claimant or his duly authorized representative may request in writing a full and fair review of the claim by the Plan Administrator, or by the Committee which may be appointed by the Employer for that purpose. The Claim Administrator or committee may extend the 180-day period where the nature of the benefit involved or other attendant circumstances make such extension appropriate. In connection with such review, the claimant or his duly authorized representative may review pertinent documents and may submit issues and comments in writing. The Claim Administrator or committee shall make a decision promptly, and not later than 60 days after the Plan Administrator's receipt of a request for review. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based. If the decision on review is not made within such period, the claim will be considered denied.

Overpayments or Errors

If it is later determined that the participant and/or the participant's spouse or dependent(s) received an overpayment or a payment was made in error, whether it is due to a mistake as to the eligibility of participation or the allocations made to your Flat HRA or an adjustment made by the HDHC, you will be required to refund the overpayment or erroneous reimbursement to the Flat HRA Plan.

If the overpayment or erroneous payment is not refunded, the Flat HRA Plan and the Employer reserve the right to offset future reimbursement equal to the overpayment or erroneous payment or, if that is not feasible, to withhold such funds from your compensation.

Nondiscriminatory Operation

All rules, decisions and designations by the Employer, Claim Administrator, and each committee under the Plan shall be made in a nondiscriminatory manner, and persons similarly situated shall be treated alike.

Liability of Administrative Personnel

Neither the Employer nor any of its employees shall be liable for any loss due to an error or omission in administration of the Plan unless the loss is due to the gross negligence or willful misconduct of the party to be charged or is due to the failure of the party to be charged to exercise a fiduciary responsibility with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Participant's Health Information

THE FOLLOWING DESCRIBES HOW MEDICAL INFORMATION ABOUT PLAN PARTICIPANTS MAY BE USED AND DISCLOSED AND HOW PLAN PARTICIPANTS CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

As a Health Plan subject to HIPAA, the plan shall comply with the standards for privacy of protected health information as set forth in the Privacy Rule, the security standards for the protection of Electronic PHI as set forth in the Security Rule, and the notification requirements for Breaches of Unsecured PHI under the Breach Notification Rule.

The Protected Health Information (PHI) provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its regulations ("Rules") and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH") include privacy protections impacting handling of the group health plan medical or financial information that could identify an individual.

Protected Health Information (PHI) is information created or received by plans subject to HIPAA that relates to the past, present or, future individual's physical or mental health condition (including genetic information as provided under the Genetic Information Nondiscrimination Act), the provision of health care to an individual, or payment for the provision of health care to an individual. Typically, the information identifies the individual, the diagnosis, and the treatment or supplies used in the course of treatment. It includes information held or transmitted in any form or media, whether electronic, paper, or oral.

The Protected Health Information (PHI) provisions of HIPAA and its rules include privacy protections impacting group handling health plan medical or financial information that could identify an individual. Individually identifiable information is protected whether it is in electronic, paper or oral format. The HIPAA rules give individuals control over health and financial information related to their health care. PHI may be used only for limited purposes without consent, and in many situations, only upon individual authorization. Regarding their own PHI, they have the right to:

A. Object to using information;

B. Gain access to information;

C. Change information; and

D. Obtain an accounting of any information disclosures.

An underlying principle of the rules is that the "minimum necessary" disclosure should be the standard when using or disclosing information in the normal course of treatment, payment or health plan operations.

Participants in this plan are guaranteed access to their PHI and have the right to: (1) copy and amend health information; (2) receive an accounting of PHI uses; and (3) receive notices of health plans' privacy practices. Individuals have the right to request that PHI use and disclosure be restricted even for treatment and payment purpose.

Certification Requirement

The Flat HRA shall disclose PHI, including Electronic PHI, to Authorized employees of the Employer only upon receipt of a certification by the Employer that the Employer agrees:

A. not to use or further disclose PHI other than as permitted or required by the Privacy Policy or as required by law;

B. to take reasonable steps to ensure that any agents to whom the Employer provides PHI or Electronic PHI received from the Plan agree: (1) to the same restrictions and conditions that apply to the Employer with respect to such PHI; and (2) to implement reasonable and appropriate security measures to protect such Electronic PHI;

C. not to use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer other than another Health Plan;

D. to report to the Plan any use or disclosure of PHI, including Electronic PHI, that is inconsistent with the uses or disclosures, or any security incident, of which the Employer becomes aware;

E. to make available PHI for inspection and copying in accordance with 45 CFR §164.524;

F. to make available PHI for amendment, and to incorporate any amendments to PHI, in accordance with 45 CFR §164.526;

G. to make available PHI required to provide an accounting of disclosures in accordance with 45 CFR §164.528;

H. to make its internal practices, books, and records relating to the use and disclosure of PHI and Electronic PHI, received on behalf of the Plan, available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Rule, the Breach Notification Rule, or the Security Rule;

I. if feasible, to return or destroy all PHI and Electronic PHI received from the Plan that the Employer still maintains in any form and retain no copies of such PHI and Electronic PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of PHI infeasible and Electronic PHI;

J. to take reasonable steps to ensure that there is adequate separation between the Plan and the Employer’s activities in its role as Plan sponsor and employer, and that such adequate separation is supported by reasonable and appropriate security measures; and

K. to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that the Employer creates, receives, maintains, or transmits on behalf of the Plan.

Electronic Data Security Obligations

To the extent the Plan maintains electronic PHI, the Plan will:

A. Reasonably and appropriately safeguard electronic PHI created, received, maintained, or transmitted to or by the Employer on behalf of the Plan as required by the HIPAA Security Rules;

B. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that the Employer creates, receives, maintains, or transmits on behalf of the Plan;

C. Ensure that the separation is supported by reasonable and appropriate security measures;

D. Ensure that any agents, including subcontractors, to whom it provides electronic PHI agree to implement reasonable and appropriate security measures to protect the electronic PHI; and

E. Report to the Plan any security incident involving PHI including any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations of which it becomes aware.

Permitted Uses and Disclosures

The Plan places restrictions on the Employer's use or disclosure of PHI received from the plan or an insurer. Insurers may determine what information will be available to the Plan.

Only Authorized employees shall be permitted to use, disclose, create, receive, access, maintain, or transmit PHI or Electronic PHI on behalf of the Plan. The use or disclosure of PHI or Electronic PHI by Authorized employees shall be restricted to the Plan administration functions that the Employer performs on behalf of the Plan.

The HIPAA Plan may disclose PHI to the Authorized employees of the Plan Sponsor only for limited purposes as defined in the HIPAA Privacy Rules. The Authorized employees may access, request, receive, use, disclose, create, and/or transmit PHI only to perform certain permitted and required functions on behalf of the plan and agree to use and disclose PHI only as permitted or required by HIPAA. This includes:

A. Plan's own Payment and Health Care Operations functions including;

   1. Enrollment of eligible individuals;

   2. Eligibility determinations;

3. Payment for coverage;

4. Claim payment activities;

5. Coordination of benefits; and

6. Claims appeals.

B. Another HIPAA Health Plan's Payment and Health Care Operations functions;

C. Disclosures to a health care provider, as defined under 45 CFR §160.103, for the health care provider's treatment activities;

D. Disclosures to the Employer, acting in its role as Plan sponsor, of (1) summary health information for purposes of obtaining health insurance coverage or premium bids for HIPAA Health Plans or for making decisions to modify, amend, or terminate a HIPAA Health Plan; or (2) enrollment or disenrollment information;

E. Disclosures of a participant's, spouse's, or dependent's PHI to the participant or the dependent or his or her personal representative, as defined under 45 CFR §164.502(g);

F. Disclosures to a participant's, spouse's, or dependent's family members or friends involved in the participant's, spouse's, or dependent's health care or payment for the participant's, spouse's, or dependent's health care, or to notify a participant's, spouse's, or dependent's family in the event of an emergency or disaster relief situation;

G. Uses and disclosures to comply with workers' compensation laws;

H. Uses and disclosures for legal and law-enforcement purposes, such as to comply with a court order;

I. Disclosures to the Secretary of Health and Human Services to demonstrate the Plan's compliance with the Privacy Rule, Security Rule, or Breach Notification Rule;

J. Uses and disclosures for other governmental purposes, such as for national security purposes;

K. Uses and disclosures for certain health and safety purposes, such as to prevent or lessen a threat to public health, to report suspected cases of abuse, neglect, or domestic violence, or relating to a claim for public benefits or services;

L. Uses and disclosures to identify a decedent or cause of death, or for tissue donation purposes;

M. Uses and disclosures required by other applicable laws;

N. Uses and disclosures pursuant to the participant's authorization that satisfies the requirements of 45 CFR §164.508;

O. Enrollment of eligible individuals;

P. Eligibility determinations; and

Q. Payment for coverage;

The Plan will meet the minimum necessary uses and disclosures provisions of HIPAA for PHI. However, the minimum necessary provisions *do not apply* to the following:

A. Disclosures to or request by a health care provider for treatment purposes;

B. Disclosures to the individual who is the subject of the information;

C. Uses or disclosures made based on an authorization requested by the individual;

D. Uses or disclosures required for compliance with HIPAA's transaction standards (see 813);

E. Disclosures to HHS when the rule requires the disclosure of information for enforcement purpose; or

F. Uses or disclosures that are required by other laws.

Any uses or disclosures for which the covered entity has a valid authorization are exempt.

The Plan will require any agents, including subcontractors, to whom it provides PHI to agree to the same restrictions and conditions that apply to the Company or Plan sponsor with respect to such information. The Company or Plan sponsor will report to the Plan any use or disclosure of PHI it knows is other than as permitted by the Plan and HIPAA Regulations.

Marketing

The group health plan(s) and other covered entities, as defined by HIPAA, will not use or disclose PHI for marketing purposes without the individual's authorization, except for face-to-face communications with the individual or promotional gifts of nominal value.

Communications that are part of treatment or are about a plan's benefits, services or operations are excluded from the definition of marketing, even if they promote the use or sale of a service or product. Specifically excluded from the definition of marketing communications about:

A. Participating providers and health plans in a network, the services offered by a provider or the benefits covered by a health plan;

B. Treatment of the individual; and

C. Case management or care coordination for the individual, or directions or recommendations for alternative treatments, therapies, health care providers or settings of care to that individual.

This health plan is not engaging in marketing when it advises enrollees about other available health coverage that could enhance or substitute for existing health coverage. For example, if a child is about to age out of coverage under a family policy, the plan may send the family information about continuation coverage for the child. This exception does not extend to excepted benefits under HIPAA, such as accident-only policies or auto medical liability, nor to other lines of insurance.

It is not marketing for this plan to communicate about health-related products and services available only to plan enrollees or members that add value to but are not part of a plan of benefits. To qualify for this exclusion, the communication must meet two conditions:

A. It must be health-related. For example, offers of discounts for eyeglasses may be considered part of plan benefits. This exclusion appears to include wellness programs that offer incentives to adopt healthy lifestyle behaviors.

B. It must offer an added value of plan membership and not merely be a pass-through of a discount or item available to the public at large.

For marketing activities permitted by an authorization, if there is remuneration, the marketing material must state that the entity making the communication is being paid by another entity.

Prohibited Uses and Disclosures

Notwithstanding anything in the Plan to the contrary, use or disclosure of Protected Health information is prohibited in the following situations:

A. *Genetic Information*. Use or disclosure of Protected Health Information that is Genetic Information about an individual for underwriting purposes shall not be a permitted use or disclosure. The term "underwriting purposes" includes determining eligibility for benefits, computation of premium or contribution amounts, or the creation, renewal, or replacement of a contract of health insurance.

B. *Employment-Related Actions*. Use or disclosure of Protected Health Information for the purpose of employment-related actions or decisions shall not be a permitted use or disclosure.

C. *Other Benefits.* Use or disclosure of Protected Health Information in connection with any other benefit or employee benefit plan of the Employer, except as expressly permitted above, shall not be a permitted use or disclosure.

Plan administration functions do not include functions performed by the Employer for employment-related functions.

The Authorized employees will be subject to disciplinary action and sanctions pursuant to the Employer's employee discipline and termination procedures, for any use or disclosure of a Covered Individual's Protected Health Information or Electronic Protected Health Information in breach or violation of or noncompliance with the provisions of the Plan.

Underwriting

An insurer that receives protected group health plan information for underwriting, premium rating and other similar purpose – and that coverage is not placed with the insurer- cannot use or disclose the information for any purpose other than as required by law.

Verification

In any disclosure, other than those allowing the individual to agree or object, verification of the identity of anyone requesting PHI who is not known to the health plan or other covered entity must first occur.

If disclosure is conditional on documentation or statements from the person seeking PHI, that documentation or statement must be obtained before the PHI can be disclosed.

Breach Notification

Following the discovery of a breach of unsecured PHI, the Plan shall notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of a breach, in accordance with 45 CFR §164.404, and shall notify the Secretary of Health and Human Services in accordance with 45 CFR §164.408. For a breach of unsecured PHI involving more than 500 residents of a State or jurisdiction, the Plan shall notify the media in accordance with 45 CFR §164.406. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified in regulations or other guidance issued by the Secretary of Health and Human Services.

Section V

Continuation of Coverage

In General

The following provisions shall apply to benefits provided to eligible employees and their dependents under the plan, but only to the extent that the benefits selected pertain to health care and medical coverage. This coverage shall be continued pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) Title X (COBRA) unless the employer is exempt.

Continuation of Coverage

To the extent required by COBRA, a qualified beneficiary who would lose coverage under this Plan as a result of a qualifying event is entitled to elect continuation

coverage within the election period under this Plan. Coverage provided under this provision is on a contributory basis. No evidence of good health will be required.

Except as otherwise specified in an election, any election by a qualified beneficiary who is a covered employee or spouse of the covered employee will be deemed to include an election for continuation coverage under this provision on behalf of any other qualified beneficiary who would lose coverage by reason of a qualifying event.

If this Plan provides a choice among the types of coverage under this Plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage (i.e. single, family, etc.).

Employer elects to allow continuation of any participant upon termination of employment that has completed 10 years of service. COBRA does not have to be elected to spend down the balance on vested accounts. No additional benefits will be credited without a COBRA Continuation election.

Employer elects not to allow continuation of any participant upon termination of employment that has not completed 10 years of employment. COBRA Continuation is available for such participant.

If an employee (whether or not a participant) terminates employment and is not rehired within 30 days for any other reason, including, but not limited to, a reduction in hours, and then becomes an eligible employee again, the employee will be treated as new and must re-satisfy (complete the waiting period) Plan eligibility requirements before receiving contributions to the plan. During the waiting period, the participant may continue to receive reimbursements from the plan until their unused account balance has been exhausted.

If terminated employee is rehired within 30 days or less after the date of termination of employment and is otherwise eligible to participate in the Plan, then the employee may immediately rejoin the Plan and be reinstated with the same Flat HRA account contributions amounts based on enrollment level that such individual had before termination.

If an employee (whether or not a participant) ceases to be an eligible employee for any reason (other than for termination of employment), including, but not limited to, a reduction of hours, and then becomes an eligible employee again, the employee may rejoin the Plan without having to re-satisfy (complete the waiting period) Plan eligibility requirements.

Type of Coverage

Continuation coverage under this provision is coverage which is identical to the coverage provided under this Plan to similarly situated beneficiaries under this Plan with respect to whom a qualifying event has not occurred as of the time coverage is being provided. If coverage under this Plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all qualified beneficiaries under this Plan in connection with such group.

You may have other options available when you lose group health coverage

For example, you may be eligible to buy an individual plan through the health insurance marketplace. By enrolling in coverage through the marketplace, you may qualify for lower costs on your monthly premiums and lower out-of-pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

Coverage Period

The coverage under this provision will extend for at least the period beginning on the date of a qualifying event and ending not earlier than the earliest of the following:

A. in the case of a terminated employee (except for gross misconduct) or a covered employee whose hours have been reduced, except as provided in B. and C. below, and his covered dependents, the date which is 18 months after the qualifying event;

B. in the case of a qualified beneficiary disabled during the first 60 days following the covered employee's termination (except for gross misconduct) the date which is 29 months after the qualifying event, provided the qualified beneficiary provides the Plan Administrator with notice of Social Security disability determination within 60 days of the disability determination and within 18 months of the qualifying event;

Note: The right to the disability extension may be terminated if the SSA determines that the disabled qualified beneficiary is no longer disabled. The qualified beneficiary receiving the disability extension is required to notify the Plan Administrator if the SSA makes such a determination, and you must provide this notice within the 30-day period after the SSA makes such a determination. Such a notice is to be in writing and delivered in person or mailed to the Plan Administrator.

C. in the case of a terminated employee (except for gross misconduct) or covered employee whose hours have been reduced, and the employee became entitled to Medicare less than 18 months before the qualifying event, for the covered dependents, the date which is 36 months after the date of Medicare entitlement.

D. in the case of a second qualifying event, which includes the death of a covered employee, the divorce of a covered employee and spouse, or a loss of dependent status under the plan, which occurs during the 18-months after the date that a covered employee is terminated (except for gross misconduct) or the date that a covered employee's hours are reduced, you may become entitled to an 18-month extension (giving a total maximum period of 36 months of continuation coverage). The affected individual is entitled to this continuation coverage period only if it would have caused loss of coverage under the plan, in the absence of the first qualifying event. The affected individual is required to notify the Plan Administrator in the same manner as Section B Above.

E. in the case of any qualifying event except as described in A., B., and C. above, the date which is 36 months after the date of the qualifying event;

F. the date on which the Employer or a Participating Employer, if any, ceases to provide any group health plan to any employee;

G. the date on which the qualified beneficiary fails to make timely payment of the required contribution pursuant to this provision;

H. the date on which the qualified beneficiary first becomes, after the date of the election, covered under any other group health plan as an employee or dependent, or otherwise becomes entitled to benefits under Title XVIII of the Social Security Act (Medicare). However, if the other group health plan has a preexisting condition limitation, coverage under the Plan will not cease while such preexisting condition limitation under the other group plan remains in effect (taking into account, for plan years commencing after June 30, 1997, prior creditable coverage under the portability rules of the Health Insurance Portability and Accountability Act of 1996). In no event will coverage continue longer than the coverage period as set forth in this Section.

I. the right of continuation coverage under the Plan may be terminated prior to the end of the continuing coverage period if the individual engages in conduct that would justify the plan in terminating coverage of a similarly situated participant or beneficiary.

J. the Plan Administrator is required to give notice of Unavailability of Continuation Coverage should the rights of continuation coverage be denied or terminated. This Notice of Unavailability of Continuation Coverage will state the specific reason for denial of the claim for continuation coverage. The individual will be notified of the date the coverage will terminate, and the reason for termination and the rights the qualified beneficiary may have under the plan or applicable law, or to elect alternative group or individual coverage, such as a right to convert to an individual policy.

Contribution

A. A qualified beneficiary shall only be entitled to continuation coverage provided such qualified beneficiary pays the applicable premium required by the Employer or a participating Employer in full and in advance, except as provided in B. below. Such premium shall not exceed the requirements of applicable federal law. A qualified beneficiary may elect to pay such premium in monthly installments. The election notice will contain complete information as to the amount of the premium required.

B. Except as provided in C. below, the payment of any premium shall be considered to be timely if made within 30 days after the date due, or within such longer period of time as applies to or under this Plan.

C. Notwithstanding A. and B. above, if an election is made after a qualifying event during the election period, this Plan will permit payment of the required premium

for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

D. Certain individuals may be eligible for a Federal Income tax credit as a result of the Trade Adjustment Assistance Reform Act of 2002 (HCTC). This tax credit helps pay for the premium of continuation coverage. An individual who loses a job due to the effect of international trade may be entitled to this tax credit (payable in some cases directly to the employer to offset the cost of the premium) and qualify for trade adjustment assistance. Those receiving pension payments from the Pension Benefit Guaranty Corporation (PBGC) may become entitled to the tax credit as well. If you become entitled to this tax credit, contact HCTC Customer Contact Center at 1-866-628-4282.

Notification by Qualified Beneficiary

Each covered employee or qualified beneficiary must notify the Employer or a participating Employer of the occurrence of a divorce or legal separation of the covered employee from such covered employee's spouse, and/or the covered employee's dependent child ceasing to be a dependent child under the terms of this Plan within **60** days after the date of such occurrence.

Keep Your Plan Informed of Address Changes. In order to protect you and your family's rights, you must keep the Plan Administrator informed of any changes in the addresses of yourself and/or family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

Notification Procedure

Any notice that you provide must be in writing addressed to the Plan Administrator. Oral notice, including notice by telephone, is not acceptable. Electronic notices (email or fax) are not acceptable. Your notice must be complete and must be postmarked no later than the last day of the required notice period. Your notice must state the name and address of the Employer, the name of the group health plan, the name and address of the employee covered under the plan, and the name(s) and address(es) of the qualified beneficiary(ies). Your notice must also name the qualifying event and the date it happened. Your notice of a second qualifying event must also name the event and the date it happened.

Your notice of a child's loss of dependent status must include documentation of the date of the qualifying event (i.e., a birth certificate). This will allow the Plan Administrator to determine if you gave timely notice of the qualifying event and were consequently entitled to elect COBRA. If the qualifying event or the second qualifying is a divorce, your notice must include a copy of the divorce decree.

Your notice of disability or cessation of disability must include the name of the disabled qualified beneficiary, the date when the qualified beneficiary became disabled or ceased to be disabled and the date the Social Security Administration made its determination. Your notice of disability or cessation of disability must include a copy of the Social Security Administration's determination.

Notification to Qualified Beneficiary

A. The Employer shall provide written notice to each covered employee and spouse of such covered employee of his/her right to continuation coverage under this provision as required by federal law.

B. The Employer shall notify any qualified beneficiary of the right to elect continuation coverage under this provision as required by federal law. If the qualifying event is the divorce or legal separation of the covered employee from the covered employee's spouse or a dependent child ceasing to be a dependent child under the terms of this Plan, City of Marquette, shall only be required to notify a qualified beneficiary of his/her right to elect continuation coverage if the covered employee or the qualified beneficiary notifies City of Marquette of such qualifying event.

C. Notification of the requirements of this provision to the spouse of a covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time notification is made.

Section VI

Definitions

A. **"Dependent"** means (a) any individual who is a participant's child as defined by Code §152(f)(1) and who has not attained age 27, and (b) any tax dependent of a participant as defined in Code §105(b) provided, however, that any child to whom Code §152(e) (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) applies is treated as a dependent of both parents. Notwithstanding the foregoing, the Flat HRA Account will provide benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "dependent."

B. **"Election Period"** means the 60-day period during which a qualified beneficiary who would lose coverage as a result of a qualifying event may elect continuation coverage. This 60 day period begins not later than the date of termination of coverage as a result of a qualifying event and ends not earlier than 60 days after the later of such date of termination of coverage or the receipt of notice of the right to elect continuation coverage under this Plan.

C. **"Full-Time Student"** means a dependent child who is enrolled in, regularly attends and is recognized by the Registrar of an accredited secondary school, college or university, institution for the training of registered nurses (R.N.), or any other accredited or licensed school for the minimum number of credit hours required by that institution in order to maintain full-time student status.

D. **"Medicare"** means the Health Insurance for the Aged and Disabled Act, Title XVIII of Public Law 89-97, Social Security, as amended.

E. **"Qualified Beneficiary"** means an individual who, on the day before the qualifying event for a covered employee, is a beneficiary under this Plan as the dependent (as defined in Section 1 hereof) of the covered employee. In the case of the termination of a covered employee (except by reason of such covered employee's gross misconduct) or the reduction in hours of the covered employee's employment, the term qualified beneficiary includes the covered employee. Effective January 1, 1997, a child who is born to (or placed for adoption with) a qualified beneficiary who is a covered employee during the coverage period shall also be a qualified beneficiary.

   Exception - the term qualified beneficiary does not include an individual whose status as a covered employee is attributable to a period in which such individual is a nonresident alien who received no earned income from the Employer which constituted income from sources within the United States (within the meaning of Code section 911(d)(2) and section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to this paragraph, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship to such individual.

F. **"Qualifying Event"** means with respect to a covered employee, any of the following events which, but for the continuation coverage under this provision, would result in the loss of coverage of a qualified beneficiary:

   (i) the death of the covered employee;

   (ii) the termination (except by reason of such covered employee's gross misconduct) or reduction in hours of the covered employee's employment;

   (iii) divorce or legal separation of the covered employee from such covered employee's spouse, as herein defined;

   (iv) the covered employee becoming entitled to benefits under Title XVIII of the Social Security Act (Medicare);

   (v) a dependent child who ceases to be a dependent child under the terms of this Plan;

   (vi) the Company's filing for Chapter 11 reorganization as it would affect retiree coverage.

G. **"University/College"** means an accredited institution listed in the current publication of accredited institutions of higher education.

Section VII

Miscellaneous

Amendment and Termination

This Employer or its authorized representative may amend or terminate this Plan at any time by action of the Commission. The Employer may amend this Plan retroactively to enable the Plan to qualify as a cafeteria Plan under sections 105 and 106 of the Code. No amendment shall deprive any participant or beneficiary of any

benefit to which he or she is entitled under this Plan with respect to contributions previously made, and no amendment shall provide for the use of funds or assets other than for the benefit of employees and their beneficiaries, except as may be specifically authorized by statute or regulation.

Effect of Plan on Employment

The Plan shall not be deemed to constitute a contract of employment between the participating Employer and any participant or to be a consideration or an inducement for the employment of any participant or employee. Nothing contained in this Plan shall be deemed to give any participant or employee the right to be retained in the service of the participating Employer or to interfere with the right of the Employer to discharge any participant or employee at any time regardless of the effect which such discharge will have upon him or her as a participant of this Plan.

Alienation of Benefits

The right of any participant to receive any reimbursement under this Plan shall not be alienable by the participant by assignment or any other method and shall not be subject to claims by the participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

Facility of Payment

If the Employer deems any person incapable of receiving benefit to which he is entitled by reason of not having reached the age of majority, illness, infirmity, or other incapacity, it may direct that payment be made directly for the benefit of such person or to any person selected by the Employer to disburse it, whose receipt shall be a complete release of the Employer and shall be deemed full payment of the benefit. Such payments shall, to the extent thereof, discharge all liability of the Employer.

Proof of Claim

As a condition of receiving benefits under the Plan, any person may be required to submit whatever proof the Employer may require either directly to the Employer or to any person delegated by it.

Status of Benefits

The Employer believes that this Plan is in compliance with section 105 of the Code and that it provides certain benefits to employees which are tax free pursuant to other provisions of the Code. This Plan has not been submitted to the Internal Revenue Service for approval, and thus there can be and is no guarantee that intended tax benefits will be available. Any participant, by accepting benefits under this Plan, agrees to be liable for any tax plus interest that may be imposed with respect to those benefits and is obligated to notify the administrator if the participant has any reason to believe that such payment is not excludable from the participant's gross income for federal, state, or local income tax purposes.

If any participant receives one or more payments or reimbursements under this Plan on a tax-free basis, and such payments do not qualify for such treatment under the Code, such participant shall indemnify and reimburse the Employer for any liability it

may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

Applicable Law

The Plan shall be construed and enforced according to the laws of the State of Michigan to the extent not pre-empted by any federal law.

Lost Distributees

Any benefit payable hereunder shall be deemed forfeited if the Employer is unable to locate the participant to whom payment is due, provided, however that such benefit shall be reinstated if a claim is made by the participant for the forfeited benefit.

Source of Payments

The Employer and any insurance company contracts purchased or held by the Employer shall be the sole sources of benefits under the Plan. No employee or beneficiary shall have any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable under the Plan to such employee or beneficiary.

Plan Provisions Controlling

In the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

Severability

If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Plan shall be construed and enforced as if such provision had not been included.

Heirs and Assigns

This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of all parties, including each participant and beneficiary.

Headings and Captions

The headings and captions set forth in the Plan are provided for convenience only, shall not be considered part of the Plan, and shall not be employed in construction of the Plan.

Tax Effects

Neither the Employer nor the Plan Administrator makes any warranty or other representation as to whether or not payments received by a participant under the Plan will be treated as includible in gross income for federal or state income tax purposes.

Multiple Functions

Any person or a group of persons may serve in more than one fiduciary capacity with respect to the Plan.

Gender and Form

Unless the context clearly indicates otherwise, pronouns shall be interpreted so that the masculine pronoun shall include the feminine, and the singular shall include the plural.

Prior Year Claims Run Out Period

Claims can be submitted up to 90 days past the end of the Plan Year. Claims received after 90 days are subject to Carrier and Administrator approval.

No Reversion to Employer

At no time, shall any part of Plan assets be used for, or diverted to, purposes other than for the exclusive benefit of Plan participants or their beneficiaries, or for defraying reasonable expenses of administering the Plan.

Executed this Date: 01-31-2023

ATTEST: City of Marquette

BY: _____(Authorized Officer)

_____(Printed)

_____(Title)

City of Marquette
Fixed Contribution Health Reimbursement Arrangement (Flat HRA) Plan Document
Amended February 01, 2023

Schedule A

Schedule of Benefits

PLAN YEAR: July 1, 2018 through June 30, 2019

For Participants enrolled as Single Participants:	$28.30 Bi-Weekly	$ 735.80 Annual*
For Participants enrolled as 2-Person Coverage:	$74.36 Bi-Weekly	$1,933.36 Annual*
For Participants enrolled with Family Coverage:	$94.10 Bi-Weekly	$2,446.60 Annual*

PLAN YEAR: July 1, 2019 through June 30, 2020

For Participants enrolled as Single Participants:	$28.39 Bi-Weekly	$ 738.14 Annual*
For Participants enrolled as 2-Person Coverage:	$74.57 Bi-Weekly	$1,938.82 Annual*
For Participants enrolled with Family Coverage:	$94.36 Bi-Weekly	$2,453.36 Annual*

PLAN YEAR: July 1, 2020 through June 30, 2021

For Participants enrolled as Single Participants:	$25.15 Bi-Weekly	$ 653.90 Annual*
For Participants enrolled as 2-Person Coverage:	$65.88 Bi-Weekly	$1,712.88 Annual*
For Participants enrolled with Family Coverage:	$83.34 Bi-Weekly	$2,166.84 Annual*

PLAN YEAR: July 1, 2021 through June 30, 2022

For Participants enrolled as Single Participants:	$27.73 Bi-Weekly	$ 720.98 Annual*
For Participants enrolled as 2-Person Coverage:	$72.23 Bi-Weekly	$1,877.98 Annual*
For Participants enrolled with Family Coverage:	$91.29 Bi-Weekly	$2,373.54 Annual*

PLAN YEAR: July 1, 2022 through June 30, 2023

For Participants enrolled as Single Participants:	$26.94 Bi-Weekly	$ 700.44 Annual*
For Participants enrolled as 2-Person Coverage:	$70.21 Bi-Weekly	$1,825.46 Annual*
For Participants enrolled with Family Coverage:	$88.75 Bi-Weekly	$2,307.50 Annual*

* **Maximum benefits that may be credited to a Flat HRA account for an Employee who participates for an entire 12-month period of coverage. Yearly maximum benefit subject to change based on the periodically adjusted cap limits set by Department of Treasury for the State of Michigan.**

Employer contributions to the Plan will be made pro rata on a bi-weekly basis.

If the Employee enrolls in this Plan coincidentally with the Employers group accident and health Plan other than on a Plan anniversary, the Employer's annual contribution to the Participant's Fixed Contribution Health Reimbursement Arrangement account will be an amount equal to 1/12th of the amounts shown above multiplied by the number of whole months remaining until the end of the Plan Year.

Spend Down: While participating in the Plan, active Employees and Retirees or Terminated employees with vested accounts may continue to receive reimbursements from the Plan until their unused account balance has been exhausted. Upon retirement or leaving the City's HDHC with Buy-Down Plan, contributions will cease. Monthly administrative fees are deducted from remaining funds. All Flat HRA Plan rules apply until such credits are exhausted.

Vested: Unused benefit credits in an Active Employee not enrolled in the City's HDHC plan with Buy-Down option, a Retiree or a terminated Participant's Flat HRA account qualify for spend down. Retiree or terminated Participants must have completed at least 10 years of employment with the City of Marquette in order to be vested.

List of Participating Employers, if any, participating in the plan:

There are no other Employers affiliated with this plan.

Claims can be submitted to the Third-Party Administrator:

TPA Claims Administration by:	**Submit Manual Claims to:**
44North – Cadillac Office **1406 N. Mitchell Street** **PO Box 700** **Cadillac, MI 49601**	**44North – Marquette Office** **620 S. Lake Street** **PO Box 747** **Marquette, MI 49855**
Or Faxed to: (855) 306-1098	**Or Faxed to: (855) 579-5044**

Agenda Date: 2/27/2023

Consent Agenda
Ordinance 719 - Business Licensing

BACKGROUND:

In accordance with City Code, the City Clerk's office issues local business licenses for several types of commercial activity. This includes licenses for jewelry stores, secondhand shops, mobile food vending units, sidewalk cafes and outdoor merchandise areas, among others. The basic application and licensing process is spelled out in Chapter 12 of the Marquette City Code.

The attached ordinance would amend Chapter 12, Article II of the Marquette City Code to do the following:

- Stipulate that the average City business license be valid for one year, from the date of issuance.
- Require license renewal applications be filed 30 days prior to the expiration of the existing license.
- Clarify that failure to obtain a local license required by state statute is punishable by Municipal Civil Infraction.
- Refine the appeals process for license suspension and revocation.
- Make minor clerical amendments.

Also included is a version of Article II with the recommended changes reflected.

Per City Charter, this ordinance cannot be adopted at the meeting in which it is introduced. This item should be moved to the next regular meeting agenda for a second read and possible adoption.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Move Ordinance 719 to the next regular meeting agenda.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Ord 719 - Draft
- Ch 12, Art II w/ changes

ORDINANCE #719
AN ORDINANCE TO AMEND MARQUETTE CITY CODE CHAPTER 12 – BUSINESSES, IN ORDER TO UPDATE LICENSING PROCESSES

INTENT
The purpose of this ordinance is to amend several sections of Chapter 12, Article II of the Marquette City Code in order to change the timeline for annual licenses and renewals, refine the process for appealing license suspension and revocation and to make minor clerical and formatting changes.

The City of Marquette Ordains:

SECTION 1. That Section 12-27 be hereby amended in its entirety to read as follows:

Sec. 12-27. License required.
No person shall engage or be engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of either this Code or of state law without first obtaining a license from the city in the manner provided for in this article. An application for license shall be reviewed as follows:

(1) The city police chief or designee shall investigate the applicant as necessary to satisfy himself that there are no outstanding criminal charges against the applicant and that the business to be conducted is not intended to cheat or defraud the public. Upon making such determination to his satisfaction, he shall indicate his approval in writing. A license shall not be issued unless such approval has been obtained. In all cases where the certification of the chief of police is required prior to the issuance of any license, such certification shall be based upon a finding that the person making application for such license has the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.
(2) The city treasurer or designee shall determine if the applicant owes to the city any taxes or other default, and if no such default exists, shall so indicate his findings in writing. A license shall not be issued where default is reported.
(3) The city planner or zoning official shall determine if the property and structure to be used is appropriately zoned for such business and shall indicate his approval in writing. A license shall not be issued without such approval.
(4) The city attorney, if required by this Code, shall review the application and supporting materials as required in section 34-54 and shall indicate his approval in writing. A license may not be issued without such approval.
(5) The fire chief or designee shall make a determination as to the habitability and safety of the structure and property to be used for such business, and shall verify the safety and legality of all fireworks sales. Such approval shall be indicated in

writing. A license may not be issued without such approval. In all cases where the certification of the fire chief is required prior to the issuance of any license, such certification shall be based upon an actual inspection and a finding that the premises in which the person making application for such license proposes to conduct or is conducting the trade, profession, business or privilege comply with all the fire regulations of the state and of the city.

SECTION 2. That Section 12-31 be hereby amended in its entirety to read as follows:

Sec. 12-31. License year.
Unless otherwise provided in this Code, all licenses shall be issued for a term of one year, commencing on the 1st day of the month in which the license is originally issued.

SECTION 3. That Section 12-35 be hereby amended in its entirety to read as follows:

Sec. 12-35. Fees and bonds.

(1) The fee and any bond required to be paid to obtain any license to engage in the operation, conduct, or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of either this Code or of State law shall be as currently established or as hereafter adopted by resolution of the city commission from time to time. No license shall be issued to any applicant unless he first pays to the city clerk the fee and posts a bond in the amount required for the type of license desired.
(2) Where the provisions of this Code require that the applicant for any license or permit furnish a bond, such bond shall be furnished in an amount as currently established or as hereafter adopted by resolution of the city commission from time to time; and the form of such bond shall be acceptable to the city attorney. In lieu of a bond, an applicant for a license or permit may furnish one or more policies of insurance in the same amounts and providing the same protection as called for in any such bond; any such policies of insurance shall be approved as to substance by the city official issuing said license or permit and as to form by the city attorney.

SECTION 4. That Section 12-36 be hereby amended in its entirety to read as follows:

Sec. 12-36. License renewals.
Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application. However, completed applications, and associated fees, for license renewal shall be submitted to the office of the issuing authority prescribed in this Code at least thirty days prior to the expiration of

the existing license. Any person seeking a license renewal who fails to submit a completed application and associated fees by this deadline shall be guilty of a municipal civil infraction.

SECTION 5. That Section 12-40 be hereby amended in its entirety to read as follows:

Sec. 12-40. Suspension or revocation.

(1) Any license or permit issued by the city pursuant to this chapter may be suspended or revoked by the city clerk or by the issuing authority for cause. Upon license revocation, the license holder shall have 14 days from the mailing of the written notice of revocation to appeal the decision to the city manager. The city manager may require additional information or act upon the appeal based upon the information previously supplied to the city. Should the city manager reverse the decision of the issuing authority, the city shall reinstate the license. Should the city manager affirm the decision, he/she shall mail by first class mail a written notice affirming the decision to the address for the license holder contained in the city's records.

(2) Should the city manager affirm the revocation of a license, the license holder shall have 14 days from the mailing of the decision of the city manager to appeal the decision to the city commission, by filing with the city clerk a written notice of appeal. The city commission shall hear the appeal at its next regularly scheduled meeting, but no sooner than seven days from the receipt of the appeal. The commission may confirm such suspension or revocation or reinstate any such license. The action taken by the commission shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.

SECTION 6. That Section 12-41(4) be hereby amended to read as follows:

(4) Forbidden by the provisions of this Code or state law or any duly established rule or regulation of the city applicable to the trade, profession, business or privilege for which the license or permit has been granted.

SECTION 7. That this ordinance shall take effect ten days after adoption but not before publication.

_____ _____

Cody O. Mayer, Mayor Kyle Whitney, City Clerk

Date Adopted: _____ Date Published: _____

ARTICLE II. LICENSES[1]

Secs. 12-25, 12-26. Reserved.

Sec. 12-27. License required.

No person shall engage or be engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of either this Code or of State law without first obtaining a license from the city in the manner provided for in this article. An application for license shall be reviewed as follows:

(1) The city police chief or designee shall investigate the applicant as necessary to satisfy himself that there are no outstanding criminal charges against the applicant and that the business to be conducted is not intended to cheat or defraud the public. Upon making such determination to his satisfaction, he shall indicate his approval in writing. A license shall not be issued unless such approval has been obtained. In all cases where the certification of the chief of police is required prior to the issuance of any license ~~by the city clerk~~, such certification shall be based upon a finding that the person making application for such license has the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(2) The city treasurer or designee shall determine if the applicant owes to the city any taxes or other default, and if no such default exists, shall so indicate his findings in writing. A license shall not be issued where default is reported.

(3) The city planner or zoning official shall determine if the property and structure to be used is appropriately zoned for such business and shall indicate his approval in writing. A license shall not be issued without such approval.

(4) The city attorney, if required by this Code, shall review the application and supporting materials as required in section 34-54 and shall indicate his approval in writing. A license may not be issued without such approval.

(5) The fire chief or designee shall make a determination as to the habitability and safety of the structure and property to be used for such business, and shall verify the safety and legality of all fireworks sales. Such approval shall be indicated in writing. A license may not be issued without such approval. In all cases where the certification of the fire chief is required prior to the issuance of any license ~~by the city clerk~~, such certification shall be based upon an actual inspection and a finding that the premises in which the person making application for such license proposes to conduct or is conducting the trade, profession, business or privilege comply with all the fire regulations of the state and of the city.

(Ord. No. 665, § 3, 5-14-2018)

[1]Editor's note(s)—Ord. No. 665, § 3, adopted May 14, 2018, repealed art. II in its entirety and enacted new provisions to read as herein set out. Former art. II, §§ 12-25—12-47, pertained to similar subject matter, and derived from the 1999 Code, §§ 6.5.01—6.5.10, 6.5.14—6.5.26, 6.6.01, 6.6.02.

Sec. 12-28. Multiple businesses.

The granting of a license or permit to any person operating, conducting or carrying on any trade, profession, business or privilege which contains within itself, or is composed of, trades, professions, businesses or privileges which are required by this Code to be licensed, shall not relieve the person to whom such license or permit is granted from the necessity of securing individual licenses or permits for each such trade, profession, business or privilege.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-29. State-licensed businesses.

The fact that a license or permit has been granted to any person by the state to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall not exempt such person from the necessity of securing a license or permit from the city if such license or permit is required by this Code.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-30. License application.

Unless otherwise provided in this Code, every person required to obtain a license from the city to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for said license to the city clerk upon forms provided by the city clerk and shall state under oath or affirmation such facts as may be required for, or applicable to, the granting of such license. However, each application shall include, at minimum: name, address, birth date and contact information for the business owner, as well as a photocopy of a current government-issued identification.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-31. License year.

Unless otherwise provided in this Code, all licenses shall be issued for a term of one year, commencing on the 1st day of the month in which the license is originally issued.~~The license year shall begin May 1 of each year and shall terminate at 12:00 midnight on April 30 of the following year. In all cases where the provisions of this article permit the issuance of licenses for periods of less than one year, the effective date of such licenses shall commence with the dates as indicated on the license.~~

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-32. Conditions for issuance.

No license or permit required by this Code shall be issued to any person who is required to have a license or permit from the state until such person shall submit evidence of such state license or permit and proof that all fees appertaining thereto have been paid. No license shall be granted to any applicant therefor until such applicant has complied with all of the provisions of this Code applicable to the trade, profession, business or privilege for which application for license is made.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-33. Where certification required.

No license shall be granted where the certification of any officer of the city is required prior to the issuance thereof, until such certification is made.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-34. County health officer's certificate.

In all cases where the certification of the county health officer is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the person making application and the premises in which he proposes to conduct or is conducting the trade, profession, business or privilege comply with all the sanitary requirements of the state and of the city.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-35. Fees and bonds.

(~~a~~1) The fee and any bond required to be paid to obtain any license to engage in the operation, conduct, or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of either this Code or of State law shall be as currently established or as hereafter adopted by resolution of the city commission from time to time. No license shall be issued to any applicant unless he first pays to the city clerk the fee and posts a bond in the amount required for the type of license desired.

(~~b~~2) Where the provisions of this Code require that the applicant for any license or permit furnish a bond, such bond shall be furnished in an amount as currently established or as hereafter adopted by resolution of the city commission from time to time; and the form of such bond shall be acceptable to the city attorney. In lieu of a bond, an applicant for a license or permit may furnish one or more policies of insurance in the same amounts and providing the same protection as called for in any such bond; any such policies of insurance shall be approved as to substance by the city official issuing said license or permit and as to form by the city attorney.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-36. License renewals.

Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application. However, completed applications~~,~~ and associated fees, for license renewal shall be submitted to the office of the issuing authority prescribed in this Code at least ~~ten~~ thirty business days prior to the ~~start of the business license year~~expiration of the existing license. Any person seeking a license renewal who fails to submit a completed application and associated fees by this deadline shall be guilty of a municipal civil infraction.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-37. Right to issuance.

If the application for any license is approved by the proper officers of the city, as provided in this Code, said license shall be granted and shall serve as a receipt for payment of the fee prescribed for such licenses.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-38. Fees—Payment.

The fee required by this Code for any license or permit shall be paid at the office of the issuing authority prescribed in this Code upon or before the granting of said license or permit.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-39. Same—Exempt persons.

No license fee shall be required from any person exempt from such fee by state or federal law. Such persons shall comply with all other provisions of this article. The city clerk shall, in all such cases, issue to such persons licenses which are clearly marked as to said exemption and the reason therefor.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-40. Suspension or revocation.

(1) Any license or permit issued by the city pursuant to this chapter may be suspended or revoked by the city ~~manager~~ clerk or by the issuing authority for cause. Upon license revocation, the license holder shall have 14 days from the mailing of the written notice of revocation to appeal the decision to the city manager. The city manager may require additional information or act upon the appeal based upon the information previously supplied to the city. Should the city manager reverse the decision of the issuing authority, the city shall reinstate the license. Should the city manager affirm the decision, he/she shall mail by first class mail a written notice affirming the decision to the address for the license holder contained in the city's records.

~~(1)~~(2) Should the city manager affirm the revocation of a license, the license holder shall have 14 days from the mailing of the decision of the city manager to appeal the decision to the city commission, by filing with the city clerk a written notice of appeal. The city commission shall hear the appeal at its next regularly scheduled meeting, but no sooner than seven days from the receipt of the appeal.~~The licensee shall have the right to a hearing before the commission on any such action, provided a written request therefor is filed with the city clerk within five days after receipt of said notice of suspension or revocation.~~ The commission may confirm such suspension or revocation or reinstate any such license. The action taken by the commission shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-41. "Cause" defined.

The term "cause," as used in this article, shall include the doing or omitting of any act or permitting any condition to exist in connection with any trade, profession, business or privilege for which a license or permit is granted under the provisions of this Code, or upon any premises or facilities used in connection therewith, which act, omission or condition is:

(1) Contrary to health, morals, safety or welfare of the public;

(2) Unlawful, irregular or fraudulent in nature;

(3) Unauthorized or beyond the scope of the license or permit granted; or

(4) Forbidden by the provisions of this Code or state law or any duly established rule or regulation of the city applicable to the trade, profession, business or privilege for which the license or permit has been granted.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-42. Reserved.

Sec. 12-43. Exhibition of license.

No licensee shall fail to carry any license issued in accordance with the provisions of this article upon his person at all times when engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which the license was granted; except that where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, said license shall be exhibited at all times in some conspicuous place in his place of business. Every licensee shall produce his license for examination when requested to do so by any city law enforcement officer or by any person representing the issuing authority.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-44. Reserved.

Sec. 12-45. Displaying invalid license.

No person shall display any expired or otherwise invalid license.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-46. Misuse—Transferability.

No license or permit issued under the provisions of this Code shall be transferable. No licensee or permittee shall transfer or attempt to transfer his license or permit to another nor shall he make any improper use of the same.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-47. Same—Automatic revocation.

In addition to the penalty provision of section 1-13 for violation thereof, any attempt by a licensee or permittee to transfer his license or permit to another, or use the same improperly, shall be void and result in the automatic revocation of such license or permit.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-48. Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

(Ord. No. 665, § 3, 5-14-2018)

Sec. 12-49. Applicability.

All processes and penalties detailed in this article apply to business licenses issued under any section of this code, including but not limited to those licenses required by chapters 6, 12, 34 and 35.

(Ord. No. 665, § 3, 5-14-2018)

Secs. 12-50—12-74. Reserved.

Agenda Date: 2/27/2023

Consent Agenda
Superior Watershed Partnership – Lease Agreement

BACKGROUND:

The Superior Watershed Partnership (SWP) has approached the City and Marquette Downtown Development Authority (DDA) to request the use of City property for the installation of electric vehicle charging stations. If approved, charging stations will be installed at the Lakeshore Public Parking Lot, Commons Public Parking Lot, and the Father Jacques Marquette Parking Lot.

The term of the lease will be for four years and may be renewed for additional three-year terms upon mutual consent of the parties. The rental rate is $375 per year per charging station, based on usage of five square feet of property, a rate of $6.25/square foot per month. Based on the maintenance and management of the charging stations, the lease revenue for the three charging stations will go to the DDA.

The DDA approved this lease at their meeting held on February 9, 2023.

The first read of the lease was at the February 13, 2023 City Commission meeting.

FISCAL EFFECT:

The Marquette Downtown Development Authority will receive $31.25 per month ($375 annually) per charging station during the term of the lease agreement.

RECOMMENDATION:

Approve the lease agreement with the Superior Watershed Partnership, and authorize the Mayor to sign the document.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Lease

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____ 2023, by and between THE CITY OF MARQUETTE, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, and THE MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY, an authority of the City of Marquette, of 337 W. Washington Street, Marquette, Michigan 49855, hereinafter "Lessor", and THE SUPERIOR WATERSHED PARTNERSHIP, a Michigan 501c3 nonprofit, of 9 Peter White Drive Marquette, Michigan 49855, hereinafter "Lessee".

This lease is in conjunction with the approved grant agreement between EGLE and SWP.

Recitals

A. Lessor is the owner of the real property and improvements commonly known as the Lakeshore Public Parking Lot, Commons Public Parking Lot, and the Father Jacques Marquette parking lot, located at 301 S. Lakeshore Blvd, 112 S 3rd Street, and 501 S. Front Street, shown on the map provided (the "Premises").

B. Lessee desires to lease and Lessor is wi1ling to lease to Lessee a portion of the Premises in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

1.1 Lessor leases to Lessee space as described in Exhibit A and as shown in Exhibit B, hereinafter "Premises".

1.2 Each charging station will require a total 5 square feet of leased space (“Space”) for the installation and operation of an electric vehicle charging station.

2. Term of Lease

The term of this lease shall be for four (4) years from the date of execution and may, upon expiration of the original term, be renewed by written mutual consent of the parties for additional three (3) year terms upon terms and conditions as agreed upon by the parties. This lease may be terminated by either party upon 180 days written notice of termination to the other party. Upon termination of this lease, Lessee shall return the Premises to Lessor in its original condition at Lessee's sole cost.

3. Rent

3.1 The rent shall be $375 per year for each space commencing upon the start of installation of the first electric vehicle charging station, due in advance to Lessor at the address set forth herein on the first day of installation. Any partial month shall be prorated according to $31.25 per month.

3.2 Lessee shall be responsible for directly paying all utilities that are metered separately for the Premises.

4. Use of Premises

4.1 Lessee shall use the Premises only for the installation and operation of an electric vehicle charging station. Lessee shall not use the Premises for any purpose that would:

a) be deemed hazardous to the public or adjoining premises including, but not necessarily limited to fire, and environmental type hazards;

b) constitute a violation of any public law or requirement;

c) cause damage or injury to the Premises, or any part of it (ordinary wear and tear excepted);

d) constitute a public or private nuisance;

e) interfere with other uses of the Premises; or

t) permit refuse to accumulate in or around Premises.

5. Exclusive Use of Premises

Lessee shall have exclusive use of the Premises, but acknowledges that its use of the common areas surround the Premises, including ingress and egress to and from a public street, is not exclusive and that Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the common areas.

6. Maintenance and Repair

6.1 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's tangible personal property located on the Premises and shall keep them in a safe condition and good repair. Lessee is solely responsible for all repairs.

6.2 Lessee shall be solely responsible for the construction, installation, maintenance and/or replacement of all signs on the Premises; however no sign may be installed without prior written approval from Lessor. All signs must meet the requirements of loca1 rules, regulations and laws.

6.3 Lessor shall provide snow plowing and basic landscaping services as needed to the Premises.

7. Insurance and Indemnity

7.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's insurance policies covering the Premises.

7.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased.

7.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.

7.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand and 00/100 Dollars ($500,000.00} for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear

endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

7.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing, such cost to include attorneys' fees} resulting or occurring by reason of Lessee's use and occupancy of the Premises.

8. Assignment/Subletting

8.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.

8.2 Lessor may freely assign its rights and obligations under this Lease Agreement to any third party pursuant to a Purchase and Sale Agreement, Land Contract or similar instrument.

9. Use of Premises by Lessor

Lessor reserves for itself and its contractors and agents the right to enter the Premises at reasonable times for the purpose of inspecting, maintaining, installation, operation and repair services of the Premises or adjacent real property.

10. Covenant of Quiet Enjoyment

Lessor warrants and represents that it has full authority to execute this lease for the above term. Lessor covenants that upon Lessee paying the rents and performing its covenants and duties prescribed herein, Lessee may, except as otherwise described herein, have the non-exclusive and reasonable right to have, hold and enjoy the Premises.

11. Lessor's Right to Perform Lessee's Obligation

If Lessee defaults in the observance or performance of any term or covenant of this lease, Lessor may, without thereby waiving the default, remedy the default at Lessee's expense. If, in connection therewith, Lessor makes any expenditure or incurs any obligation for the payment of money or in instituting, prosecuting, or defending any action or proceeding commenced before or during the term of this lease, or after the expiration or termination of this lease including, but not necessarily limited to, legal expenses and attorneys' fees, Lessee shall pay to Lessor on demand the sums paid or obligations incurred together with legal fees and costs.

12. Default by Lessee

12.1 If the Lessee fails to perform any obligation under this agreement within 30 days after receiving written notice of the default from the Lessor the Lessor may terminate this lease.

12.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand the Lessor's costs for curing any defaults, as additional rent under this lease.

12.3 The rights and remedies of Lessor shall be cumulative as more particularly provided by law or in equity pursuant to the laws of the State of Michigan.

13. Surrender of Leasehold upon Termination of Lease

If upon termination of the lease, Lessee has failed to remove its tangible personal property, equipment, vehicles or other items, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

14. Miscellaneous

14.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

14.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

14.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.

14.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

14.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.

14.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

14.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately fo1lowed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written.

LESSOR

CITY OF MARQUETTE

_____

Cody O. Mayer, Mayor

Approved as to Substance:

_____

Karen Kovacs, City Manager

Approved as to Form:

_____

Suzanne Larsen, City Attorney

LESSEE

SUPERIOR WATERSHED PARTNERSHIP

Carl Lindquist

Carl Lindquist (Feb 23, 2023 13:42 EST)

Exhibit A

LEGAL DESCRIPTION

Lakeshore Public Parking Lot: 301 S. Lakeshore Blvd

Parking lot center: 46.54166689°, -87.39191112°

T48N R 25W Sec. 23 NENWSE

Parking lot located immediately SE of the intersection of Main St. and S. Lakeshore Blvd.

Commons Public Parking Lot: 112 S 3rd Street

Parking lot center: 46.54320754°, -87.39603558°

T48N R25W Sec. 23 SESENW

Parking lot located immediately SW of the intersection of W. Washington St. and S. Third St.

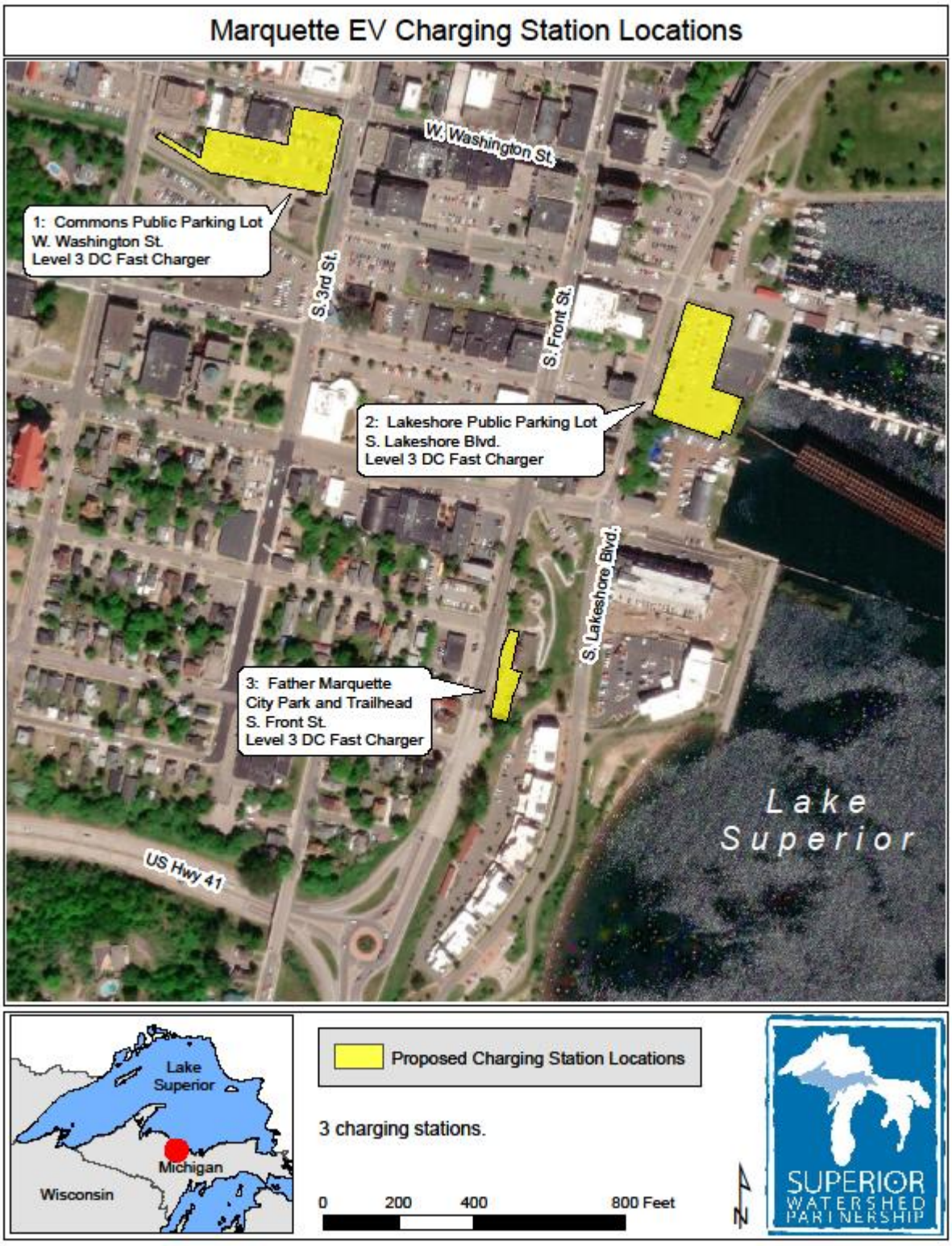
Father Marquette Parking Lot: 501 S. Front Street

Parking lot center: 46.53943909°, -87.39382646°

T48N R25W Sec. 23 SWNWSE

Parking lot located immediately SE of the intersection of Front St. and Rock St.

Exhibit B


Marquette EV Charging Station Locations
W. Washington St.
1: Commons Public Parking Lot
W. Washington St.
Level 3 DC Fast Charger
S. 3rd St.
S. Front St.
2: Lakeshore Public Parking Lot
S. Lakeshore Blvd.
Level 3 DC Fast Charger
S. Lakeshore Blvd.
3: Father Marquette
City Park and Trailhead
S. Front St.
Level 3 DC Fast Charger
Lake
Superior
US Hwy 41
Lake
Superior
Michigan
Wisconsin
Proposed Charging Station Locations
3 charging stations.
0
200
400
800 Feet
N
SUPERIOR
WATERSHED
PARTNERSHIP

SWP EV Lease

Final Audit Report 2023-02-23

Created:	2023-02-23
By:	Sean Hobbins (shobbins@marquettemi.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9sgA6VEcezccuYBdtFAbSFeCtDtbMgSA

"SWP EV Lease" History

Document created by Sean Hobbins (shobbins@marquettemi.gov)
2023-02-23 - 6:26:32 PM GMT- IP address: 131.150.169.38

Document emailed to carl@superiorwatersheds.org for signature
2023-02-23 - 6:30:36 PM GMT

Email viewed by carl@superiorwatersheds.org
2023-02-23 - 6:41:41 PM GMT- IP address: 131.150.26.208

Signer carl@superiorwatersheds.org entered name at signing as Carl Lindquist
2023-02-23 - 6:42:55 PM GMT- IP address: 131.150.26.208

Document e-signed by Carl Lindquist (carl@superiorwatersheds.org)
Signature Date: 2023-02-23 - 6:42:57 PM GMT - Time Source: server- IP address: 131.150.26.208

Agreement completed.
2023-02-23 - 6:42:57 PM GMT

Agenda Date: 2/27/2023

New Business
MiNextCities Grant Agreement

BACKGROUND:

In the latter portion of 2021, the City was approached by NextEnergy, a Detroit based non-profit that is partnered with EGLE to start the MiNextCities program. MiNextCities chose three communities statewide (Marquette, Flint, and Dearborn) to identify and deploy tailored solutions that improve energy solutions backed by research, policy, and urban planning for a broad spectrum of residents. Following Commission approval to engage with the program in 2022, the City Manager's office began meeting biweekly with NextEnergy staff to develop a model plan that is in line with the City's climate resolution, clean energy goals, and departmental needs. Meetings were coordinated with Department Heads and appropriate supervisors throughout the City to assess energy, asset, and facility needs that could be provided a solution with the funding attached to the program.

The City's prior investment into energy performance and efficiency through the JCI program completed many of the "low hanging fruit" projects and significant research into rooftop solar for the Wastewater Treatment Plant and Lakeview Arena found that those projects still lack a feasible return on investment with the current price of materials and technology. NextEnergy's final recommendation centers on the development and jump start of a fleet electrification program that will entail funding the installation of charging infrastructure, vehicles, and a future fleet plan. This grant agreement provides for the purchase and installation of two level-two EV chargers, two Ford E-Transit vans, and a Mean Green electric mower. This plan was developed in close coordination with the Facilities Director and Motor Pool supervisor, and the motor pool asset replacement schedule was utilized to balance the market availability of the vehicles and the highest and best use for organizational deployment. One van will be deployed to the Public Works department, the other will be deployed to Engineering, and the lawnmower will be used by Facilities.

This entire initiative will be grant-funded with no match required from the City and represents a significant step forward in introducing City operations and employees to the future of electric vehicles within a Municipal fleet, as well as an estimated investment of $200,000 into the City's motor pool from external funding sources.

FISCAL EFFECT:

The City will be reimbursed for up to $200,000 in expenses related to the grant.

RECOMMENDATION:

Authorize the City Manager to sign and execute the grant agreement and authorize all expenditures provided for under Attachment B of the grant agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Grant Agreement

NextEnergy Grant Agreement

This binding Agreement (the "**Agreement**") is entered into as of 2/27/2023 (the "**Effective Date**") by and between NextEnergy, 440 Burroughs Suite 370, Detroit, MI 48202 (the "Grantor") and the City of Marquette, 300 W Baraga Ave., Marquette, MI 49855 (the "Grantee"). As used in this Agreement, NextEnergy and Grantee are sometimes individually referred to as a "Party" and collectively as "Parties."

1) **NATURE OF SERVICES.** The purpose of this Agreement is to provide up to $200,000 over multiple phases to the Grantee from NextEnergy's MiNextCities program for the purpose of supporting the development and implementation of the Grantee's project as outlined in the Scope of Work included as Attachment A.

2) **PERFORMANCE SCHEDULE.** This Agreement will commence on the Effective Date and will be effective for 90 days past the completion date as outlined in Attachment A.

3) **INCORPORATION BY REFERENCE.** The following documents are incorporated by reference as binding obligations, term, and conditions of the Agreement.
   a) Attachment A – Scope of Work and Milestone Template
      In the event of any inconsistency between the provisions of Attachment A of this Agreement, the provisions of this Agreement shall control.
   b) Attachment B – Planning Budget
   c) Attachment C – State of Michigan Grant Requirements

4) **PAYMENT SCHEDULE INFORMATION.** NextEnergy agrees to pay the Grantee a sum not to exceed $200,000 (the "Grant") contingent upon completion of milestones and statement of work.
   a) Payment under this Agreement shall be made by NextEnergy to Grantee as outlined in the Scope of Work upon receipt and approval of Grantee's report and billing statement stating that the work for which payment is requested has been appropriately performed. Grantee shall provide the Grantor with Grantee's billing statement and summary reports via the reporting requirement and schedule as outlined in the Scope of Work.
   b) The Grantee agrees that all funds shown in the Budget are to be spent as specified. This Agreement does not commit NextEnergy to approve requests for additional funds during or beyond this Grant period.
   c) Changes in the budget will be allowed only upon prior review and written approval by the Grant Administrator.

d) In the event that there are charges submitted at the milestone that deviate from the agreed-upon expenditure or budgeted amount, Grantee's billing statement(s) may be subject to a final audit prior to the release of final payment. Grantor shall notify Grantee of any such issue within seven (7) business days of receipt of billing statement and attempt to cure the issue with Grantee within five (5) business days.

5) **GRANT ADMINISTRATOR.** The Grantee must communicate with the Grantor representative named below or his or her designee regarding this Agreement (the "Grant Administrator"). The Grant Administrator may be changed, at any time, at the discretion of NextEnergy.
   a) Grant Administrator for NextEnergy

      Kate Bell
      MiNextCities Program Manager, NextEnergy
      440 Burroughs St.
      Suite 370
      Detroit, MI 48202
      313.319.8010
      kateb@nextenergy.org

6) **INVOICING.** Grantee shall categorize each invoice with current and cumulative charges entered appropriately to date. ***Notice: Payment processing can take up to 60 days after invoice submission.***
   a) All invoices and supporting documents will be emailed to invoices@nextenergy.org with cc: to the Grant Administrator.
   b) NextEnergy point of contact for receiving grant invoices is:

      Latonya Binford
      Senior Accountant
      313.833.0100 x103
      latonyab@nextenergy.org

   c) Grant invoices for completed work must include the following:
      i) A unique identifying number, date issued, bill to, payable to and project title. NextEnergy issues electronic funds transfer payments and requires a completed Vendor Payment Information Form for grant payment submission. Please see Sample Invoice for illustration.
      ii) **The Billed To Address**: NextEnergy 440 Burroughs St Suite 370 Detroit MI 48202
      iii) A completed Memorandum for the Record. NextEnergy will provide a template for this short-form record. For each invoice, briefly describe the completion of work (who/what/where/when/why) and include, if any, significant variations in planned scope and budget vs. actual. Note: this document and associated completed work is subject to final approval by the Grant Administrator prior to processing invoice payment.

iv) The invoice and all supporting documentation including receipts provided in PDF format. Please see Invoice Supporting Documentation Guidance for acceptable supporting documents.

7) **GRANTEE DUTIES.** Grantee agrees to undertake, perform, and complete the services fully described in the Scope of Work as mutually agreed upon by 1) NextEnergy, 2) any strategic partner to be agreed upon by the Grantor and the Grantee, and the 3) Grantee; and as required by the final selection of a strategic partner, to amend the Scope of Work and any Agreement terms as deemed necessary.

   a) Within ten (10) business days following the last business day of each month, the Grantee will provide a high-level progress report.
   b) This report shall include a summary of activities to date.

8) **RELATIONSHIP OF THE PARTIES.** Due to the nature of the services described herein and the need for the specialized skills and knowledge of Grantee, NextEnergy is entering into this Agreement with Grantee. As a result, neither Grantee nor any of its employees or agents is or shall become an employee of NextEnergy due to this Agreement.
   a) Grantee will provide the services and achieve the results specified in this Agreement free from the direction or control of NextEnergy as to means and methods of performance.
   b) NextEnergy is not responsible for any insurance or other fringe benefits, including, but not limited to, Social Security, Worker's Compensation, income tax withholdings, retirement or leave benefits, for Grantee or its employees. Grantee assumes full responsibility for the provision of all such insurance coverage and fringe benefits for its employees.
   c) All tools, supplies, materials, equipment and office space necessary to carry out the services described in this Agreement are the sole responsibility of Grantee unless otherwise specified herein.
   d) Grantee shall retain all control of its employees and staffing decisions independent of the direction and control of NextEnergy.

9) **ACCESS TO RECORDS.** During the Term, and for seven (7) years after the Ending Date, the Grantee shall maintain reasonable records, including evidence that the services were performed and the identity of all individuals paid for such services, and shall allow access to those records by NextEnergy or their authorized representative at any time during this period.

10) **TERMINATION.** This Agreement shall terminate upon the earlier of the following:
   a) On 03/15/2023 if the Scope of Work and Milestone Template is not completed.
   b) The Ending Date, as outlined in the Scope of Work.
   c) Termination for nonperformance of the Scope of Work or an Event of Default by either party by giving thirty (30) calendar days prior written notice to the other Party.

d) In the event that the sponsors of MiNextCities take any action that affects NextEnergy's ability to fund and administer this Agreement, cancellation may be made by giving thirty (30) calendar days prior written notice to the Grantee. Any costs incurred prior to the date of notice will be reimbursed by Grantor to Grantee. Grantor will provide Grantee with a statement for public disclosure as to the nature of the termination.

11) **EMPLOYEES.** The Grantee will not hire any employee of NextEnergy to perform any services covered by this agreement without prior written approval from the Chief Executive Officer of NextEnergy.

12) **CONFIDENTIAL INFORMATION.** The Parties have agreed to jointly execute the Scope of Work in Attachment A. In connection with the execution of the Scope of Work, the Parties may prepare and furnish each other with certain Confidential Information and materials relating to its business, ideas, and operations, including but not limited to its business plan, services, business relationships, planning, technical and research data, financial information and/or other corporate, business, and educational information. During the term of this Agreement the following terms shall govern all matters pertaining to Confidential Information.
    a) *Definition*. "Confidential Information" means any information disclosed by Discloser to Recipient, , either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, hardware configuration information, marketing and finance documents, prototypes, samples, data sets, and Discloser's plant and equipment), designated as "confidential" at the time of disclosure. Confidential Information may also include information of a third party that is in Discloser's possession and is disclosed to Recipient under this Agreement. "Discloser" is a Party to this Agreement who discloses Confidential Information to Recipient. "Recipient" is a Party to this Agreement who receives Confidential Information from Discloser. With respect to particular Confidential Information, a Party may be Discloser or Recipient.
    b) *Exceptions*. Confidential Information shall not, however, include any information that Recipient can establish (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure to Recipient by Discloser; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure to Recipient by Discloser through no action or inaction of Recipient; or (iii) is in the rightful possession of Recipient without confidentiality obligations at the time of disclosure by Discloser to Recipient as shown by Recipient's then-contemporaneous written files and records kept in the ordinary course of business.
    c) *Compelled Disclosure*. If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice of such disclosure and will assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient's compliance with this Agreement or fails to obtain a protective order or other

appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed, provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

d) *Nonuse and Nondisclosure.* Recipient shall not use any Confidential Information for any purpose except to evaluate and engage in discussions concerning the Scope of Work. Recipient shall not disclose any Confidential Information or permit any Confidential Information to be disclosed, either directly or indirectly, to any third party without Discloser's prior written consent. Recipient shall not disclose Confidential Information or permit the disclosure of Confidential Information to its employees, except that, Recipient may disclose Confidential Information to those employees of Recipient who are required to have the information in order for Recipient to evaluate or engage in discussions concerning the Scope of Work, provided that such employee has signed a nonuse and nondisclosure agreement in content at least as protective as the provisions hereof, prior to any disclosure of Confidential Information to such employee. Recipient shall not reverse engineer, disassemble, or decompile any prototypes, software, samples, or other tangible objects that embody the Confidential Information.

e) *Maintenance of Confidentiality.* Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures it employs to protect its own most highly confidential information. Recipient shall not make any copies of the Confidential Information unless the same are previously approved in writing by Discloser. Recipient shall reproduce Discloser's proprietary rights notices on any such authorized copies, in the same manner in which such notices were set forth in or on the original. Recipient shall immediately notify Discloser of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Confidential Information.

f) *Disclosure as Required by Law.* Grantor understands that Grantee is a governmental body subject to the Open Meetings Act and the Freedom of Information Act. Accordingly, all information, even information labeled Confidential Information, that is provided to Grantee is subject to disclosure under such laws unless exempt from disclosure by law. Nothing contained herein shall limit Grantee's obligations to follow such laws pertaining to Grantee.

13) **PUBLICATIONS.** Except for Confidential Information, NextEnergy hereby agrees that researchers funded with the Grant shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, the methods and results of their research. Grantee shall at its sole discretion and at its sole cost and expense, prior to publication, seek intellectual property protection for any Inventions (as described in Section XIII) if commercially warranted. Grantee shall submit to NextEnergy a listing of articles that Grantee has submitted for publication resulting from work performed hereunder in its final report to NextEnergy. Grantee shall acknowledge the financial support received from NextEnergy, as appropriate, in any such publication.

14) **INTELLECTUAL PROPERTY RIGHTS.** NextEnergy will take no ownership of the entire right, title, and interest in any new inventions, improvements, or discoveries developed or produced under this Grant, including, but not limited to, concepts know-how, software, materials, methods, and devices ("Inventions") and shall have no right to enter into license agreements with industry covering Inventions.

15) **CONFLICT OF INTEREST.** Except as has been disclosed to NextEnergy, Grantee affirms that neither the Grantee, nor its Affiliates or their employees has, shall have, or shall acquire any contractual, financial business or other interest, direct or indirect, that would conflict in any manner with Grantee's performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement.
   a) Grantee further affirms that neither Grantee nor any affiliates or their employees has accepted or shall accept anything of value based on an understanding that the actions of the Grantee or its affiliates or either's employees on behalf of NextEnergy would be influenced. Grantee shall not attempt to influence any NextEnergy employee by the direct or indirect offer of anything of value. Grantee also affirms that neither Grantee, nor its Affiliates or their employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Grantee or its Affiliate, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.
   b) In the event of change in either the interests or services under this Agreement, Grantee will inform NextEnergy regarding possible conflicts of interest which may arise as a result of such change. Grantee agrees that conflicts of interest shall be resolved to NextEnergy's satisfaction or NextEnergy may terminate this Agreement. As used in this Paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

16) **GRANTEE LIABILITY INSURANCE.** The Grantee shall shall maintain such insurance to protect Grantor from any damages Grantor may sustain from claims that might arise out of or as a result of the Grantee's activities pursuant to this agreement. The Grantee will provide and maintain its own general liability, property damage, and workers compensation insurance. The insurance shall be written for not less than any limits of liability required by law and will have combined single limit coverage equal to or greater than the amount of one million dollars per occurrence and two million dollars aggregate for bodily injury and property damage with respect to such insurance. For demonstrations at 461 Burroughs, Detroit, MI 48202, Grantor shall be named as an additional insured.

17) **TOTAL AGREEMENT.** This Agreement, including the attachments incorporated herein, is the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding. This Agreement may not be changed except by mutual agreement of the Parties reduced to writing and signed.

18) **ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by this Agreement, the Grantee shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of NextEnergy. Any future successors of the Grantee will be bound by the provisions of this Agreement unless NextEnergy otherwise agrees in a specific written consent. NextEnergy reserves the right to approve subcontractors for this Agreement and to require the Grantee to replace subcontractors who are found to be unacceptable.

19) **COMPLIANCE WITH LAWS.** The Grantee is not and will not during the Term be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits, or other governmental authorizations necessary to carry out its duties under this Agreement.

20) **DEFAULT.** The occurrence of any one or more of the following events or conditions shall constitute an "Event of Default" under this Agreement, unless a written waiver of the Event of Default is signed by NextEnergy:
   a) any representation, covenant, certification or warranty made by the Grantee shall prove incorrect at the time that such representation, covenant, certification or warranty was made in any material respect;
   b) the Grantee's failure generally to pay debts as they mature, or the appointment of a receiver or custodian over a material portion of the Grantee's assets, which receiver or custodian is not discharged within sixty (60) calendar days of such appointment;
   c) any voluntary bankruptcy or insolvency proceedings are commenced by the Grantee;
   d) any involuntary bankruptcy or insolvency proceedings are commenced against the Grantee, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof;
   e) any writ of attachment, garnishment, execution, tax lien, or similar writ is issued against any property of the Grantee, which is not removed within sixty (60) calendar days;
   f) the Grantee's failure to comply with the reporting requirements hereof;
   g) the Grantee's failure to comply with any obligations or duties contained herein if not satisfactorily completed within a 30-day cure period;

h) Grantee's use of the Grant funds for any purpose not contemplated under this Agreement;
i) failure of Grantor to make payments for the mutually agreed-upon Scope of Work deliverables within thirty (30) days of the completion date when all milestone tasks have been successfully completed by Grantee and acknowledged by Grantor.

21) **AVAILABLE REMEDIES.** Upon the occurrence of any one or more of the Events of Default, NextEnergy may terminate this Agreement immediately upon notice to the Grantee. The termination of this Agreement is not intended to be the sole and exclusive remedy in case any Event of Default shall occur, and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law or equity.

22) **REIMBURSEMENT.** If this Grant is terminated as a result of Section 20) h) hereof, NextEnergy shall have no further obligation to make a Grant disbursement to the Grantee. The Grantee shall reimburse NextEnergy for disbursements of the Grant determined to have been expended for purposes other than as set forth herein as well as any Grant funds, which were previously disbursed but not yet expended by the Grantee.

23) **NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes:
a) on the delivery date if delivered by electronic mail or by confirmed facsimile;
b) on the delivery date if delivered personally to the Party to whom the same is directed;
c) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or
d) three (3) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available.

The notice address for the Parties shall be the address as set forth in this Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by the notifying Party. NextEnergy and Grantee may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.

24) **AMENDMENT.** This Agreement may not be modified or amended except pursuant to a written instrument signed by the Parties.

25) **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 doctrines of conflict of laws. The terms of this provision shall survive the termination or cancellation of the Agreement.

26) **COUNTERPARTS AND COPIES**. The Parties hereby agree that the faxed signatures of the Parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the Parties. Copies (whether photostatic, facsimile, or otherwise) of this Agreement may be made and relied upon to the same extent as though such copy was an original.

27) **SURVIVAL**. The terms and conditions of sections 8), 9), 12), 16), 18), 25), 26), and 27) shall survive termination of this Agreement.

The signatories below warrant that they are empowered to enter into this Agreement.

NEXTENERGY		**CITY OF MARQUETTE**
By:		By: _____
Typed:	James Saber	Typed: _____
Title:	President & Chief Executive Officer	Title: _____
Date:	2/22/2023	Date: _____
Email:	saberj@nextenergy.org	Email: _____
Phone:	313-833-0100 ext. 240	Phone: _____

ATTACHMENT A – SCOPE OF WORK AND MILESTONE TEMPLATE

Project Title: City of Marquette EV and EVSE Demonstration

Objective(s)

The objective(s) of this project include:

- Purchasing, Receiving (EVs and EVSEs), and Installing EVSEs
- Operating EVs and EVSEs during normal City operations and evaluating them for effectiveness as a substitute for like, but not electrified, assets.

Work Plan Overview

Phase 1 Planning: Conduct initial planning and execute MiNextCities grant agreement.
Phase 2 Implementation: Carry out the deployment activities, including vehicle procurement, physical installation of EVSE, and staff training on systems. Begin engaging with staff, officials on future electric vehicle planning.
Phase 3 Monitoring Controls and Closeout: Assist the city in operating the vehicles and charging equipment and collect data; conduct maintenance as needed. Continue research and planning for long-term fleet electrification strategy. Deliver final report (including long-term fleet electrification strategy) to the City of Marquette.

Project Phased Tasks

Phase 1: Planning **Period of Performance:** 1/25/2023 - 3/31/2023

Tasks:
1.1 Review Attachment A: Scope of Work (SOW)
1.2 Review and execute grant agreement with NextEnergy
1.3 Conduct initial planning to identify total number of electric vehicles to be procured, makes and models of vehicles, locations of EVSE, zoning/permitting/inspection requirements for EVSE, and any insurance, title, license plates, etc. Required for legal, official use of vehicles.
1.4 Coordinate site visit and review for the Marquette Board of Light and Power to assess feasibility and necessary next steps for installing EVSE.
1.5 Coordinate with city staff and any relevant external agencies to receive required permits to install equipment.
1.6 Identifying contacts for NextEnergy staff to engage with for developing a long-term fleet electrification plan for the City of Marquette.

Milestone 1 (02/27/2023**)**: Grant agreement executed.
Milestone 2: Vehicle specifications, charging specifications and locations determined.
Milestone 3: MBLP site reviews and assessments completed.
Milestone 4: Permits for deployments secured.

Phase 2: Implementation **Period of Performance:** 4/01/2023 - 08/31/2023

Tasks:
2.1 Install and commission EVSE.
2.2 Train key city staff on technology, data review.
2.3 Procure electric vehicles and all necessary components for legal, official use.
2.4 Conduct initial user/fleet operator evaluations.
2.5 Monitor and log vehicle use (miles driven per ride, charging information, etc.)
2.6 Begin research and development of long-term fleet electrification plan.

Milestone 5: EVSE successfully installed, commissioned.
Milestone 6: Electric vehicles successfully delivered with all necessary specifications legal use by the City of Marquette (including title, insurance, license plates, etc.)
Milestone 7: Electric vehicles successfully charged with EVSE.
Milestone 8: Electric vehicles take first official drives for city business.

Phase 3: Monitoring & Closeout **Period of Performance:** 9/01/2023 - 07/31/2024

Tasks:
3.1 Monitor EVSE and vehicle performance; conduct maintenance as needed.
3.2 Monitor and record energy use.
3.3 Review and document EVSE performance, generated value.
3.4 Finalize and deliver long-term fleet electrification plan.

Milestone 9: Final electric vehicle performance report, reviews submitted to NextEnergy.
Milestone 10: Long-term fleet electrification plan delivered to City of Marquette.

Project Metrics

- Timeline of deployment and activation of EVSE.
- Evaluation of Investment in and operation of electric vehicles, as compared to non-electrified like assets
- Investments, municipal policies/procurement procedures identified and pursued.
- Number of planned investments in city-purchased electric vehicles, charging equipment post-program.
- Adoption and usefulness as measured by fleet operator, drivers, department leaders, etc.

Project Deliverables

To NextEnergy

- Completed Attachment A Scope of Work
- Executed grant agreement
- Progress report, monthly
- Grant Invoices with supporting documentation
- Touchpoint calls with meeting notes, minutes

To City of Marquette

- Guidance and funding for the installation of electric vehicles, related equipment, data readings, uses and limitations of data, etc.
- Completed long-term fleet electrification plan.

Data Management Plan

A data management plan ("DMP") explains how data, i.e. "datasets", generated in the course of the work performed will be shared and preserved or, when justified, explains why data sharing or preservation is not possible or scientifically appropriate.

The DMP must describe how data sharing and preservation will enable validation of the results from the proposed work, or how results could be validated if data are not shared or preserved.

The DMP must provide a plan for making records of key data elements resulting from the proposed work digitally accessible in human readable format at the end of the project to NextEnergy. This includes data that are displayed in charts, figures, images, etc. In addition, the underlying digital research data used to generate the key data elements should be made as accessible as reasonably possible in accordance with the principles stated above. This requirement could be met by including the data as exported supplementary information on a separate medium (e.g. a USB thumb drive), or through other means. The DMPS should indicate how these data will be reasonably made accessible.

The DMP must protect confidentiality, personal privacy, Personally Identifiable Information, and U.S. national, homeland, and economic security; recognize proprietary interests, business confidential information, and intellectual property rights; avoid significant negative impact on innovation, and U.S. competitiveness; and otherwise be consistent with all laws (i.e., export control laws).

For key data elements that will be generated through the course of the proposed work, please indicate what types of key data elements should be protected from public disclosure (referred to as "protected data") and what types of key data elements that should be able to be released publicly.

DMPs should reflect relevant standards and community best practices and make use of community accepted repositories whenever practicable. The following list of topics for a DMP provides suggestions regarding the data management planning process and the structure of the DMP:

***Data Types and Sources**:*

This project will generate data sets with information that may include, but not be limited to, the following:

- Vehicle charging information
    - Date/time of charge
    - Time of charge vs. plug-in time

    - Rate of charge
    - Cost of charge (in $, kW/h)
    - Time to reach maximum charging capacity
- Vehicle performance
    - Vehicle miles driven per trip/use
    - Hours of use before needing charge (for lawnmower)
    - Battery life over the course of a trip/use
    - Long-term battery performance
    - Maintenance costs
    - Battery performance relative to weather, elevation, etc. as validated by GPS
- User feedback
    - Qualitative driver/operator feedback for problems encountered, ability of vehicle to perform required tasks, ability to charge, and general comfort of end-to-end operation of vehicles
- Existing vehicle inventory and telematics
    - Makes/models of existing city fleet vehicles
    - Mileage per vehicle per year/trip *or* hours per vehicle per year
    - Maintenance costs per vehicle
    - Cost of fuel per vehicle per year

***Content and Format**:*

Data formats can be varied depending on how the City of Marquette is tracking existing vehicle use data and the capabilities of the chosen charging infrastructure and associated software. Typically, primary data inputs are downloadable in Excel or CSV format. Data generated by EVSE software can be captured and stored in a variety of formats; tables and charts can be exported from software dashboards into Excel or PDF files, and additional data of interest can also be viewed directly on the dashboards.

User experience data may be collected through written driver/operator logs, surveys, and/or interviews.

Sharing and Preservation:

With the exception of confidential vehicle and driver identification information, data collected through the MiNextCities program period will be shared between the City of Marquette and NextEnergy and may be shared publicly as part of the program's reporting requirements to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) as well as other program-related publications. NextEnergy will retain records of data collected throughout the program period but will not have access to any new data collected following the termination of this grant agreement.

If feasible, the City of Marquette will grant NextEnergy remote access to any app- or web-based dashboards for vehicles and related charging infrastructure through the duration of the

program period. Data logs will be shared with NextEnergy on a biweekly or monthly basis throughout the program period.

Protection:

In the interest of privacy for fleet drivers and operators that may interact with the vehicles during the program period, any identifying personal information (names, unique driver identification numbers, etc.) will be anonymized by the City of Marquette in such a way that will allow for discrete analysis of unique vehicle trips. The City of Marquette will assign corresponding nomenclature to specific driver/operator identifies (such as “Driver 1” or alternative cryptonyms) that will conceal personal information while enabling the program team to analyze specific user interactions with the electric vehicles and charging stations.

ATTACHMENT B – PLANNING BUDGET

Item (Quantity)	*Extended Price Estimate*	*Budgeted Amount*
Ford E-transit Vans (2)	($54,912)(2) = $109,824	$130,000
Mean Green Electric Mower (1)	($34,399)(1) = $34,399	$40,000
Level 2 EV Chargers (2)	($10,000)(2) = $20,000	$20,000
Installation of Chargers (2)	($5,000)(2) = $10,000	$10,000
	NOT-TO-EXCEED TOTAL	**$200,000**

ATTACHMENT C – STATE OF MICHIGAN GRANT REQUIREMENTS

I. NON-DISCRIMINATION

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended,

MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

II. UNFAIR LABOR PRACTICES

The Grantee shall comply with 1980 PA 278, as amended, MCL 423.321 *et seq*. The Grantee agrees to not engage in unfair labor practices and attests that the Grantee is not on the list of employers prohibited from entering into contracts with the state.

III. ANTI-LOBBYING

If all or a portion of this Agreement is funded with federal funds, then in accordance with 2 CFR 200, as appropriate, the Grantee shall comply with the Anti-Lobbying Act, which prohibits the use of all project funds regardless of source, to engage in lobbying the state or federal government or in litigation against the State. Further, the Grantee shall require that the language of this assurance be included in the award documents of all subawards at all tiers.

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "'Lobbying' means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

IV. IRAN SANCTIONS ACT

By signing this Agreement, the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

V. PREVAILING WAGE

This project is subject to the Davis-Bacon Act, 40 U S C 276a, *et seq*, which requires that prevailing wages and fringe benefits be paid to contractors and subcontractors performing on federally funded projects over $2,000 for the construction, alteration, repair (including painting and decorating) of public buildings or works.

VI. OTHER SOURCES OF FUNDING

The Grantee guarantees that any claims for reimbursement made to NextEnergy under this Agreement must not be financed by any source other than NextEnergy under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings, or to immediately refund to NextEnergy, the total amount representing such duplication of funding.

VII. DEBARMENT AND SUSPENSION

By signing this Agreement, the Grantee certifies that it has checked the federal debarment/suspension list at www.SAM.gov to verify that its agents, and its subcontractors:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.
(2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
(3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).
(4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
(5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

VIII. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties

that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

IX. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

The Michigan Energy Office (MEO) must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. The bounded categories categorically excluded, listed below, require no further NEPA review, absent extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project. The Recipient is thereby authorized to use federal funds for the defined project activities.

If the Recipient later intends to add to or modify activities not included in the bounded categories below, those new activities or modified activities are subject to additional NEPA review and are not authorized for federal funding until the Contracting Officer provides approval on those additions or modifications. Recipients are restricted from taking any action using federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to authorization from the Contracting Officer. Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving federal funding and such costs may not be recognized as allowable.

These are the bounded categories that have been categorically excluded, and require no additional NEPA review:

1. Administrative activities associated with management of the designated State Energy Office and management of programs and strategies to encourage energy waste reduction and renewable energy.
2. Development and implementation of programs and strategies to encourage energy waste reduction and renewable energy
3. Funding energy efficiency retrofits, provided that projects are limited to:
    a) installation of insulation;
    b) installation of energy efficient lighting;

c) HVAC upgrades;

d) weather sealing;

e) purchase and installation of ENERGY STAR appliances;

f) replacement of windows and doors;

g) high efficiency shower/faucet upgrades; and

h) installation of solar powered appliances with improved efficiency.

4. Development, implementation, and installation of onsite renewable energy technology that generates electricity from renewable resources, provided that projects are limited to:

   a) Solar Electricity/Photovoltaic - appropriately sized system or unit on existing rooftops and parking shade structures; or a 60 kW system or smaller unit installed on the ground within the boundaries of an existing facility.

   b) Wind Turbine - 20 kW or smaller.

   c) Solar Thermal - system must be 20 kW or smaller.

   d) Solar Thermal Hot Water - appropriately sized for residences or small commercial buildings.

   e) Ground Source Heat Pump - 5.5 tons of capacity or smaller, horizontal/vertical, ground, closed-loop system.

   f) Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.

   g) Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

5. Development, implementation and installation of energy efficient or renewable energy-powered emergency systems (lighting, cooling, heat, shelter) installed in existing buildings and facilities.

6. Installation of alternative fueling pumps and systems (but not storage tanks) installed on existing facilities (other than a large biorefinery); purchase of alternative fuel vehicles.

7. Development and implementation of training programs.

8. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy waste reduction.

Implementing financial incentive programs such as rebates and energy savings performance contracts for existing facilities or for energy efficient equipment, provided that the incentives are not so large that they would be deemed to be grants that create projects that would not otherwise exist. (For example, giving a wind farm that cost $100 million a sum of $50 million and calling it a rebate would not fall within this Bounded Category).

Agenda Date: 2/27/2023

New Business
Manager and Attorney Compensation

BACKGROUND:

On September 26, the City Commission reviewed the annual performance evaluations for both the City Manager and City Attorney and extended each of their contracts for two years to September 30, 2024 at the existing compensation. At that time, the Commission also discussed revisiting compensation at a future date. At the meeting on January 30, the Mayor requested a compensation recommendation be brought to tonight's meeting. The subcommittee comprised of Mayor Pro Tem Davis and Commissioners Smith and Stonehouse met to discuss the compensation level of the Manager and Attorney on February 15.

The subcommittee's resulting recommendation is to increase the base salary of both the Manager and Attorney by 2%, retroactive to October 1, 2022, to provide a one-time bonus equivalent to 0.5% of total compensation for each of them and to extend each of their contracts by another year to September 30, 2025.

FISCAL EFFECT:

The recommended 2% increase for each the City Manager and City Attorney will bring their annual salaries to $127,500 and $117,300, respectively. Additionally, the cost of the recommended bonus for each the City Manager and City Attorney equates to $625 and $575, respectively. This action will require a budget adjustment.

RECOMMENDATION:

Approve the subcommittee's recommendation to provide the City Manager and City Attorney with a one-time payment equivalent to 0.5% of their base salaries. Also: increase both salaries by 2%, retroactive to October 1, 2022; direct the City Attorney to amend both contracts to reflect the new salaries; extend each of their contracts to September 30, 2025; and authorize the Mayor and Clerk to sign the amended contracts.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available